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APPENDIX TO SENATE JOURNAL.

REPORT

OF THE

MAJORITY OF THE JUDICIARY COMMITTEE,

On Senate Bill Number 24, Concerning the Powers and Duties of the State Auditor.

IN SENATE—February 12, 1849.

MR. SPEAKER: The Judiciary Committee has had under consideration, Senate Bill No. 24, concerning the powers and duties of the State Auditor, and the majority recommend its engrossment and passage.

The first section of this Bill proposes to repeal the Statutory delegation of the taxing power to the State Auditor.

The second is a mere re-affirmance of that clause of the constitution, which provides that "no money shall be drawn from the treasury except in consequence of appropriations made by law." A reaffirmance, which has been rendered eminently necessary, in consequence of various legislative efforts to repeal the constitution; efforts which have been so far successful as to escape immediate animadversion and even to meet with a temporary, passive and unconscious acquiescence.

The revenue system of Ohio, which is well understood by very few, is the result of a number of successive regulations, violating the natural right of the citizen to be heard, either by himself or his representative, in questions concerning the amount of his burdens and the disposition of his property. The canal tolls are pledged by Statute to aid the tax-payers in discharging the interest on the public debt. But a large part of the gross income from that source must be applied to repair our public works. Nothing but the small overplus is applicable to the interest on the public debt. The State Auditor, by his sole authority, levies on the citizen, such sums as he deems expedient for the ostensible purpose of paying that interest. When the repairs, on the public works, cost almost half a million, as was the case the past year, he simply levies half a million more from the tax-payers. Having filled his coffers he makes grants, by way of interest on their debts, to such as approach him in the guise of public creditors. In conjunction with the State Treasurer and one acting commissioner of the Canal fund, he makes grants of those immense sums, which are annually expended for the repairs of our public works. Finally, the Board of Public Works, together with the Attorney General, makes

grants to claimants, old and new, whose demands originate in contracts concerning the public works or in damages sustained "by such works."

Thus it will be seen that Ohio has a complete system of income and expenditure without the agency of the people or their General Assembly. Our ENORMOUS expenditures are authorized in conclave by a handful of men without actual or effective, practical responsibility. The deliberations of the Venitian council of ten were known by their effects, the deliberations of our council of ten, are known by nothing else!!! But the Venitian council of ten was a more numerous and more independent, and of course a less assailable, and less corruptible body than our taskmasters!!! One thing is rendered certain by this survey of our financial system. Whatever interest may have been consulted in rearing the fabric, the interest of the tax-payer was forgotten, the interest of the toiling myriads, whose labor creates our wealth, was neglected. The very essence, the genius of the institution is to afford facilities to the assailants of the treasury, to smooth their path and remove obstacles. No stormy debates of a popular assembly, no inconvenient investigation, no unwelcome discussion, no Senatorial opposition to render their approach to the treasury insecure. Such a system is not the result of accident. It has harmony of parts and symmetry as a whole. But its symmetry is that of an iron despotism over the rights and property of the citizen.

We have given this sketch in order that our fellow-citizens may understand the system as it truly is. We have endeavored "in naught to extenuate nor aught set down in malice." A captious or uncandid enemy of the monarchy would use other language and would dip his pencil in other and darker colors. But it is not captious or uncandid to remind the reader that our annual expenditures are approaching three millions of dollars, while the actual expenses of the government *proper* are some less than one hundred and twenty thousand. Such is the cost of misrule!!!

Two questions may be raised concerning the enactments proposed to be repealed by this bill; are they compatible with the constitution, and if compatible with that instrument, are they expedient?

The solution of the first question depends upon the consideration whether the power of levying taxes and making grants and appropriations of the public money is or is not a legislative power. For "the legislative authority of this State is vested in the General Assembly, consisting of the Senate and House of Representatives," according to the first section of the first article of the constitution.

The same power in all other free governments with which we are acquainted, is vested in the Legislative department. It is one of the privileges of the Commons of England to ascertain by their representatives in Parliament not only the kind of property, which shall support the burthen of taxation, but the AMOUNT which the citizen shall pay. A privilege which that people value as highly as the trial by jury, or any other right the most sacred. And of which they are so tenacious that they will not suffer the Peers to interfere in either of the beforementioned particulars, or to exercise any other discretion on

the subject, except to approve or reject the bills of the Commons in toto.

The power to "levy and collect taxes imposts and excises," is one of the powers expressly granted to the legislature of the Union, in the constitution of the United States, with the qualification that all bills for raising revenue must originate in the House of Representatives. Alexander Hamilton in the thirty-third number of the *Federalist*, speaks of this as the most important authority bestowed on the Union, and he contends that it would have vested in Congress by the mere general grant of legislative power without express words. This position he considers too clear for doubt or hesitation, and he brings forward an array of argument perfectly irresistible. We refrain from quotation as the book is easily accessible.

The example of other states may be instructive. The state of Vermont has made a majority of her House of Representatives a quorum in all cases except "raising a tax," on which occasion "two thirds at least must be present."

The state of New York, by her present constitution, has provided "that the assent of two thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public money, or property, to local or private purposes."

"Every law, which imposes, *continues*, or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

"On the final passage in either House of the Legislature of every act which imposes, *continues* or revives a tax or creates a tax or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by ayes and noes, which shall be duly entered on the Journal, and three-fifths of all the members elected to either House shall in all such cases be necessary to constitute a quorum therein."

Such is New York, and we have not the slightest reason to believe that authority at all similar to that of our State Auditor is vested in a single individual in any other state of the Union. Such are the provisions in other states and communities to secure the actual responsibility of those who make grants and appropriations of the people's money. But in Ohio the appropriations of the *Public Money*, with the exception of a mere drib which, in practice, remains with the General Assembly, are made in the darkness of a Sibyl's cave, and the people's representatives may go to the mouth of the grotto and interrogate the priestess within, and if she see fit, she will put forth an ORACLE. Having seen that the taxing power is of a legislative nature in all other free governments, is it, we ask, a mere ministerial and executive function in Ohio? That this high authority is in fact exercised by one man, and has been so exercised for many years is mere sober historical truth. But this committee insists that when our money-monarch prescribes, as a rule of civil conduct, to every man in the state, possessed of property, that he shall pay three mills on the

dollar of its valuation to defray the interest on the state debt, he legislates. We further insist that when the same mighty potentate, in close conclave, with two other men, grants to the Board of Public Works, fifty thousand dollars to repair the reservoirs of one of our canals, he legislates.

We ask gentlemen in discussion if it would not be constitutionally competent for the General Assembly to perform the same acts, which are annually performed by the State Auditor; if it would not be competent for the General Assembly to levy a tax to pay the interest on the state debt? The power of this body is instantly admitted; no heat of debate, no ardor for victory, no irritation arising from contention, can induce Senators to deny it for a moment. Is it not equally clear that the legislature could add to his levies if thought to be insufficient? If he should levy but two mills on the dollar for the year 1849, could not the Assembly, by statute, levy two mills more? If the sum levied by that functionary should be discovered to be insufficient to satisfy the annual interest on the state debts, could not the Assembly levy an additional sum? No man is hardy enough to answer these questions in the negative. Then we ask if this body can perform any act not essentially of a legislative nature? Can it perform a mere executive or ministerial function? Is the self-same act essentially executive and ministerial when performed by a single potentate, and is it essentially legislative when performed by this Assembly? Might we not as well ask if the whole is equal to all its parts; if things equal to one and the same thing are equal to each other? Then if the power of fixing the rate of taxation, of determining how much the citizen shall pay is a legislative power and *can* be exerted by this Assembly, we may be as well assured as we are of the truths of arithmetic or geometry that it can be exerted by no one else!!! But we have already seen that the legislative power of this state is by the first article of the People's Constitution granted to the General Assembly consisting of "a Senate and House of Representatives." We may then safely pronounce that as certainly as there is truth in mathematics, the delegation of the taxing power to the money monarch, is essentially unconstitutional, null and void!!! The legislature has attempted to make this delegation, but for want of constitutional authority its acts are inefficacious. It has attempted to do that which it had not constitutional power to perform. The people have said in their constitution that this transcendent power shall be exerted by their own elected representatives in the midst of discussion, and investigation and with open publicity. The members of Assembly have said that the responsibility is disagreeable, they will, therefore, transfer the power to a single potentate to be exerted in the dark winding of a labyrinth perfectly inscrutable to the popular gaze!!!

But it is contended by eloquent and accomplished men on the other side of the chamber; for what will not men argue, when hard pressed for argument, that inasmuch as the various kinds of property, which are to support the burdens of taxation, are pointed out by a general and permanent statute, the auditor in merely determining the amount of the sums, which shall be levied on that property, does not

perform a legislative act. It is readily granted that the taxing power consists of two functions; one of which determines what kind of property shall pay; the other, how much it shall pay. For the performance of the former function, a general and permanent statute is very convenient machinery. But do we not avail ourselves of the same machinery in passing our annual appropriation bills? Do we not perform a legislative act when we provide by statute for levying one-fourth of a mill on the dollar for the civil list? And does not the autocrat perform a legislative act, when he provides by his *ukase* for levying ten times as much for his own purposes? It might as well be argued to lawyers, that coparceners and tenants in common, have no interest in land! It might as well be argued, that the right hand is not a hand, because every person is happily furnished with another! Suppose the tables turned, and that the autocrat was in possession of the faculty of appointing the kinds of property to support the burdens of taxation, and the Assembly in possession of the faculty of granting supplies and fixing the rates, would not the argument be equally plausible in the mouths of gentlemen?

It is also urged that if the delegation of the taxing power to the Auditor is unconstitutional, the statutes authorizing the County Commissioners to levy small sums for purposes of local police, are unconstitutional. Suppose the argument sound, how would it aid gentlemen? It would only show that other enactments are liable to the same objection as those which we impugn. But it is perfectly fallacious. When the constitution provided for the organization of counties and townships, it in effect and by unquestionable intendment, provided for the exercise of those powers of local police, without which their organization could not be continued. Having provided the end, it provided the means. The divisions of counties and townships were familiar to the older states before our constitution was framed, and the presumption is almost invincible, that when that instrument adopted those divisions, it adopted them with their usual and known incidents. There is an almost invincible necessity for the exercise of these powers of local police; there is not the slightest necessity for the delegation of the taxing power to the Auditor.

It is urged that the duties of the autocrat are those of mere computation and detail. Is it mere computation and detail to determine whether eight hundred thousand or a million of dollars, shall be levied from the sweat of toiling myriads? Is it mere computation and detail to determine whether a quarter of a million or half a million shall be granted to the agents employed in repairing our various public works? As well might it be contended that the levying and expenditure of the revenues of the British empire or of this great Union, might be delegated to an individual, as a mere matter of computation and detail! It is not supposed that the arithmetic necessary to be employed in either case is very abstruse or intricate; but the mischief lies in permitting an individual, who forms his resolutions in the recesses of his own breast, to determine the question, how much shall be levied from the citizens and how much shall be granted to the as-

saillants of the treasury. The duties of every chairman of a committee of Ways and Means, in every legislative body, have a near relation to arithmetic, and may in some respects be said to be matters of computation and detail, yet the amount that shall be charged on the citizens and the amount that shall be granted to claimants from the treasury, are justly regarded, every where except in Ohio, to be matters of the nicest and most important legislative discretion.

The battles between liberty and prerogative were, in the country of our ancestors, formerly fought on the appropriation bills. The contest has changed its features, but no circumstance warrants the least relaxation of vigilance on the part of the people's representatives. The rights, happiness and well being of the people were formerly invaded by force; they are now invaded, in ten thousand insidious ways by **FRAUD**.

If the legislative duties of the money-monarch are so plain, so simple, so easy, so unmistakable, why do Senators seem so resolutely determined to retain his prerogatives? Why not restore the people at once to their legitimate authority, to be exercised in the ordinary manner by their agents and delegates, the members of Assembly? Are the people unfit to be trusted with their own most important concerns? Are they not willing and anxious to promote their own happiness? And do they not know that happiness consists in rectitude of conduct? Do they not know that vice in general and injustice, falsehood and bad faith in particular, are inconsistent with individual happiness as well as with national welfare, greatness and glory? In plain language, does any man in or out of this House, believe that the people or their delegates, would remain one hour deaf to the voice of justice? Has justice anything to fear from the restoration of this Assembly to its rightful functions? Does any man doubt that if the monarchy were abolished, this Assembly would instantly begin the work of preparation for the satisfaction of every just demand? Then is not the cry of repudiation, which has so often sounded within these walls since the commencement of this discussion, a mere empty, unmeaning clamor? Is not the hideous ghost of bad faith which has been conjured up and made to stalk across the stage before our eyes, a mere hob-goblin—a mere phantom intended to shake the firmness of our purposes? Will not lambs learn to eat wolves, and the beautiful river on our southern border, travel from Cincinnati to Pittsburgh, about the time that the people of Ohio repudiate their public debt? Then if we have nothing in view but the satisfaction of the claims of justice, why continue an authority so irregular, so odious, so unwarrantable, as that of the potentate? If his authority is to be used to promote only *justice, exact justice*, it is clearly *unnecessary*, as in that case it would move forward in the exact line in which that of this Assembly would otherwise proceed; for the members, acting as, they do, not in **SECRET CONCLAVE**, but in the blaze of open day, could never face a virtuous and enlightened constituency, if stained with injustice.

It then appears clear almost to a demonstration, that the revenue powers of the Auditor must be exercised in a manner very different

from that in which the same functions would be exercised in the two branches of the people's Assembly, otherwise the anxiety for its continuance would be perfectly irrational. But to suppose that the potentate would be more frugal than the legislature, in his appropriations, and make smaller grants than this body, would be to suppose that he would resist the claims of absolute justice, and thus become guilty of downright REPUDIATION; for no man supposes that the people's elected agents either could or would do any injustice to the public creditors!! Moreover, when was frugality or economy an attribute of arbitrary, irresponsible power? When did it happen that one man, or three men, forming their resolutions in the recesses of their own breasts, and having the richest gifts of fortune to bestow, and exposed to diurnal and nocturnal private solicitation, could pay any regard to the public interest? Is it in human nature, under such circumstances, to resist the claims of relations, cousins, friends, neighbors, acquaintances, and co-partizans? Possibly human virtue may be raised to such a pitch of supernatural energy. But a man whose virtue, like a salamander in a furnace, could live in the midst of such flames of temptation, would be anxious to lay down a power so invidious. The toils of preserving his virtue in such a fiery ordeal, would soon make him weary! The committee employ this reasoning only to show that the revenue powers of this potentate are exerted in some manner very different from that in which the same powers would be exerted by the people's representatives in the two Houses. As Cimmerian darkness rests upon the actual exercise of his pecuniary functions, we shall not engage in the work of idle speculation. Censorious persons are inclined to remark, that taking into view his immense appropriations for the interest of the public debt, and his enormous appropriations for repairs on our system of public works, the autocrat has at his disposal the richest CORRUPTION fund in the civilized world.

We repeat, that while we are bound in modesty to disclaim all intimate knowledge of the manner in which the pecuniary concerns of this great and mighty people are managed by their money monarch, inasmuch as his government secrets are occult, and mysterious, and removed from ordinary observation, it is due to the occasion to remark, that the accumulation of debt and taxation since the commencement of the system, has been rapid beyond all former example. Were the monarchy abolished, the very first occupation of the Assembly, after completing the investigation of abuses, would be to establish order, economy, and frugality in our finances.

Gentlemen exhort us to postpone our attacks on the throne until the public debt shall have been paid, when, as they say, they will consent to an abolition of the monarchy!!! This is indeed a proposition for an *indefinite postponement!!!* The Spaniards have a benediction, "may your shadow never grow less." It requires no spirit of prophecy to predict that the shadow of our public debt will never grow permanently less as long as the monarchy lasts. The labors of the Ohio taxpayers under such a system would resemble the never ending; still

beginning toils of one Sisyphus of *school-day* memory. The poets give us an insight into the constancy of his occupation :

“ With many a weary step, and many a groan,
Up the high hill he heaves a huge round stone ;
The huge round stone resulting with a bound,
Thunders impetuous down and smokes along the ground.”

Then his business was forthwith to heave it up to the top of the hill again. This unfortunate and interesting personage was condemned to this incessant toil, in the regions below, by Rhadamanthus, the inexorable judge of hell, for sins committed in this world. If the Buckeye taxpayers continue to submit to an unconstitutional and usurped authority, their sins will deserve a similar fate. Pay off the public debt during the existence of the present system of profligacy and corruption !!! The idea is bold and unique, if not original !!! The Auditor has reported a payment of a little upwards of four hundred and four thousand dollars of public debt during the year. It becomes a diminutive matter when we perceive that almost three hundred thousand dollars of this payment arose from the sale of land, and the calling in of the surplus revenue from the counties. Some new freak of the men in authority can easily retrace this puny step.

The committee will take this occasion to remark on the unspeakable folly of contracting public debts, and thus overburdening the energies of unborn generations. This State, less than a quarter of a century ago, commenced plunging in debt, by borrowing principal sums about half as large as those which are now annually supplied by the taxpayers to be paid away as interest. Our present annual sacrifices would make a magnificent internal improvement fund, if used as principal. But by means of the profligate system of contracting public debts, it is so contrived that when we pay a million of dollars we owe not one cent the less. Were the million directly applied to the construction of our canals, one effort would suffice, but by the cunning contrivance of public debts, the effort is forever renewing and forever renewed. Yet radically bad and impolitic as the system is, it has not produced all the baneful effects which we every where witness in Ohio, without the aid of the most gross and scandalous abuses.

The twenty-first article of the constitution expressly provides that “ no money shall be drawn from the treasury, but in consequence of appropriations made by law.” The framers of the constitution no doubt thought that they were erecting a barrier against wasteful prodigality in expenditures of the public money. But what do paper barriers avail against the efforts of unscrupulous men, intent upon the gratification of their avarice, if they can impose upon the supineness, delude the judgment, or betray the confidence of the members of Assembly. Except as to the trifling sums raised and expended by the Legislature, this article, for all practical purposes, might as well be expunged from the constitution. And it is worthy of observation that the salaries of a few public officers and the sums necessary to support our benevolent asylums are susceptible of the easiest computation, their amount can scarcely be mistaken, while the great expendi-

tures abandoned to the discretion of a single man, or of a junto of two or three men, are susceptible of the grossest abuses. What effectual check can be devised to prevent profligate extravagance in the expenditures for the repairs of our public works, except open investigation, examination and discussion by the people's representatives. Yet nothing of the kind takes place, neither the people nor their representatives are consulted about the matter. The Governor has reported in his last annual message, an expenditure of more than four hundred and seventy-two thousand dollars, made during the past year, for the repair of the public works. Not one dollar of this money was appropriated by the General Assembly.

But Senators on the other side of the chamber, contend that the Board of Canal Fund Commissioners consisting, as before remarked, of the Auditor and Treasurer of State, and one other member, make these appropriations. And they are clearly borne out by the Assembly act on the subject. But neither the Senators nor the Assembly act can discourse intelligibly on the matter without using language which presupposes the repeal of the above mentioned article of the constitution.

The 4th section of the act of the 2d of March, A. D., 1846, to prescribe the duties of the Board of Public Works, the Canal Fund Commissioners, the Auditor and Treasurer of State, in regard to the receipt and disbursement of the canal fund, &c., provides in general, that the Board of Public Works may make requisitions on the commissioners of the canal fund for money, and the commissioners of that fund shall appropriate such portion of the gross revenues received into the State Treasury from each of the public works of the State, as shall be necessary to meet such requisitions, for repairs and superintendence. And the same section uses the same term "appropriation," three times in reference to the action of this small junto, the Canal Fund Commissioners.

The fifth section authorizes the Board of Public Works to make requisitions on the same junto, for sums to pay for stationery, clerk hire, printing, salary of the secretary, and *other contingent* expenses of said board, and for the *contingent expenses* of the acting members of said board—a pretty ample provision, it would seem, for contingencies!!! And the Canal Fund Commissioners shall appropriate accordingly. The seventh section provides that such worthless speculations as will not yield revenue enough to pay the costs of their *own* repairs, shall be considered parts of other works!!! Here is ample provision for making appropriations. But when this irresponsible junto, this close conclave, makes an appropriation, is it made by law? Not unless their edicts are laws. We are willing to rest the controversy on this point: are the edicts of this divan, laws in the constitutional sense of the term?

No man who will reflect that the legislative authority of this State is, by the constitution, vested in the General Assembly, and that the same instrument forbids all appropriations except by law, can hesitate as to the answer to be given to this question. The law committee of this Senate cannot hesitate about the matter; but must pronounce that

the edicts of these men are not laws, and that the acts of Assembly which attempt to clothe them with discretionary and legislative power over the people's money, are unconstitutional, null and void. This conclusion seems so natural, so irresistible, that the only amazement is that men should be found hardy enough to controvert it.

But Senators contend that the act of the 4th of February, 1825, and other kindred acts, delegating this power to the Auditor and the Fund Commissioners, made the appropriations. But how will such reasoning bear the test of investigation? How do those acts make appropriations? Do they not simply fix up the machinery by which appropriations are made, and is not that their sole office? Does the constitution perform the functions which are performed by every Assembly act passed in conformity with its provisions? Does it not simply provide the instrumentality by which those functions may be performed? And is not that its sole office? does it do anything more? The argument may be exhibited in other words. If the General Assembly has made all the appropriations by simply authorizing the autocrat and the conclave to make them, then the convention of 1802 has made all the Assembly acts passed since that date, by simply authorizing the Assembly to make them! Oh the argument of our ingenious and eloquent opponent is false, demonstrably false in LAW, as would be the position in physics, that two different and distinct masses of matter may fill the same identical space at the same moment of time. No man in or out of the Assembly is bound to pay the least respect to these enactments. No man can by any remote possibility be subjected to any legal animadversion for disobedience. We say this in the face of the enlightened and civilized world, and with a full view to the responsibilities of our position.

What is an appropriation but a grant of a specific sum of money for a specific purpose, as to pay a debt, perform a contract, or fix the compensation of some public agent or agents? And is not the amount of the grant a matter of the most delicate legislative discretion? What did the General Assembly of 1825 know about the wants and necessities of 1849? What did it know about the expenditure of nearly half a million of dollars reported by the Governor as having been made during the past year for the repair of our system of public works? Did that body then foresee that too much or too little would be granted, during the year 1848, to the agents employed in repairing the Muskingum improvement, or the Walhonding, Hocking, or Miami Extension Canal. Yet our able and sagacious antagonists are compelled in their distress to resort to the assemblies of bygone years as the authors of these enormous appropriations. Ought not our aforesaid worthy antagonists, in candor, to confess that if appropriations can be made a quarter of a century before hand, they may be made one, two or three centuries before hand, that they may be made by one single act for the whole lifetime of the commonwealth? Ought they not in candor to confess that "appropriations may be made in the most general and sweeping manner, without any knowledge of the person of the recipient, the amount of the sum or the object of the grant?" And ought they not further to confess that their construction of the

constitution renders the twenty-first article altogether nugatory and worthless for all practical purposes? Might not that article, if their construction is correct, be just as well expunged from the instrument? The Senate and the people may rest assured that *that* is a bad cause which is so lamely defended by such able champions.

The same gentlemen urge that it is necessary to vest the power of appropriations in the Canal Fund Commissioners, because, as they say, the Assembly not being in session except in the winter months, breaches might occur in the spring and summer which would be unprovided for, and thus, as they suppose, the navigation would suffer interruption. Nothing but the ardor and zeal with which this argument is urged, could convince the committee of the gentlemen's seriousness. How do other States manage their expenditures? Have they a small conventicle to hold the public purse, and open it in undeserved bounties and largesses to their creatures and retainers? Have other States yielded up the power of the purse to a close conclave acting without practical responsibility? If the people's Assembly were restored to its constitutional functions, its first efforts would no doubt be so directed as to bring order out of our financial chaos. It would introduce frugality and economy into our public appropriations for all purposes. Does any man doubt this? Speak out, history of the last quarter of a century! Has not our civil list under the immediate superintendence of the General Assembly, been the most meagre and parsimonious that ever sufficed for the good government of two millions of people? Have not the expenditures directed by the inferior cabals, by whatever name designated, been lavish and profligate to the last degree? But this is a digression. The experience of one year would soon instruct the Assembly as to the probable amounts necessary to be appropriated for the next; and it would be an obvious expedient to grant a small and moderate sum as a provision against contingencies. Moreover the bill which is committed to us, does not declare that no work shall be done for the public until it shall have been paid for. It only reaffirms and reanimates the constitution, which declares that no money shall be drawn from the treasury except in consequence of appropriations made by law. Notwithstanding all the care of the people's representatives, it is probable that appropriations would, for a few sessions, be too liberal, but experience would soon correct the evil, and the local knowledge, and even the partizan propensities of members would be powerful checks upon abuses. It is in vain for gentlemen to bring to our notice the turbulence of popular assemblies, their partizan contentions, their violent agitations, their inconvenient scruples, their *unwelcome* discussions and their stormy debates. These things are the price which we have to pay for liberty. Despotism is still more costly. We may repose under its shadow, but we may rest assured that it is always accompanied by a reckless disregard of our dearest interests. "The trappings of a monarchy would support a republic," said the immortal Milton, and all experience proves him correct.

The committee is animated by no hostility to our public works. Those works are a fixed fact. No man wishes to undo them, what-

ever he may think of the wisdom which projected some of them. They ought to be made as productive as possible, in order to relieve the taxpayer of part of his burdens. But the interests of the taxpayers demand that they should be put under a regimen of frugality and economy as speedily as possible.

It is also urged, with the usual eloquence and ability of gentlemen, that when our public debts were contracted, this ONE MAN power of taxation was provided as the machinery by which the interest, and finally the principal was to be paid. Senators, therefore, contend that these most odious and invidious institutions have become part of the contract with our creditors, partake of its sacredness, and are not to be touched. If the General Assembly was constitutionally capable of making this important delegation of the taxing power, the discussion is at an end, for they have unquestionably done so. But if their act is unauthorized by that sacred instrument, it requires a bold man to contend that the Assembly could repeal the constitution by contract, could barter away the People's charter of liberties by bargain and sale! We look outside of the compact with the public creditors in order to determine whether these enactments are or are not constitutional. None can admit more cheerfully than this committee, that the faith of this great and mighty State is inviolably pledged to pay the public creditors. Those creditors have a vested interest in their debts, but they have no vested interest in abuses and corruptions.

The promise of the Assembly to continue or preserve such odious institutions, like a promise to engage in the slave trade, or to commit any other immorality, would be absolutely void; like the promise of an agent without authority from his principal, it would possess no binding obligation. It is not the interests of the public creditors which gentlemen promote, when they connect them in the popular mind with these mischievous and ill-omened institutions. Are we to be compelled to consult foreigners whether we may abolish institutions which insult and degrade us as much as they injure us? What right have foreigners to dictate to us in our merely internal and political concerns? Can not Senators perceive the humility of our situation, if, as they contend, we are not at liberty to reform the most manifest and flagrant abuses without leave asked and obtained of foreigners? Is there a right minded citizen in Ohio, who does not feel his degradation in being called on to submit to the dictatorial and imperial authority of a single man, whose power is not only illegitimate and unwarrantable, but susceptible of the grossest abuses? Is there a right minded citizen, who does not blush at the bare idea of the citizens of other States becoming acquainted with our revenue regulations as they truly are in all their disgusting deformity? Is there such a man, who does not blush to have it known in Europe, that we have erected a money despotism of the most degrading and illiberal character? As if conscious of the incapacity of the people to manage their own affairs through the instrumentality of their General Assembly, we delegate the most important branch of the revenue power to a single man whose UNITY OF WILL, as it is contended, can, in certain emergencies, act more efficiently than a popular Assembly. Another branch of

the same power, scarcely less important, is, for reasons equally plausible, bestowed on a triumvirate, whose unity of design makes them formidable to the treasury! Oh, if we cannot reform such institutions as these, let us, in candor, announce that popular government is a failure in Ohio!

We warn the public creditors to keep their claims out of this controversy. Nothing but their infatuation in joining the ranks of the people's enemies under the banner of the autocrat, can endanger the payment of their debts, or even occasion a temporary suspension of interest. But if they are so out of love with their own interests, as to determine to aid in fastening upon us the burthen of these most mischievous and impolitic institutions, if they will receive their dues only at the hands of the money monarch, then **BE IT KNOWN, THEY CANNOT HAVE THEIR DUES!** We make this declaration, not that we "hate repudiation less, but that we hate despotism more."

It is not for this committee to speculate as to what course the sovereign people will take, in case this bill should unhappily fail in the Senate, by our partizan divisions occasioning an equality of votes for and against the measure.

Perhaps (and we speak this with diffidence) they will wait a brief interval until the next General Assembly shall have opportunity to remedy the errors of this. That they will not permanently submit to illegal and arbitrary power, we regard as certain as any of the great laws of nature. This language reaches us in thunder tones by means of our correspondence with nearly all parts of the State. The people of Ohio are a law abiding people, they never will countenance any irregular opposition to the laws, but these pretended enactments, delegating away the most important powers of legislation to a single individual and a close cabal, are not laws, but miserable abortions unentitled either to respect or obedience.

Our opponents argue that these enactments have received a kind of tacit assent from the People, the Assembly and the Courts of law, from which they argue their constitutional validity. We go further. We admit that they originally received the express consent of the Assembly, or they could not have been placed on our statute book. But we challenge our opponents to produce a single instance in which the question has ever been made in a court of law. If no such instance can be produced, the authority of the Judiciary must be laid out of the case. But oh, is not that an invidious argument, which forbids the people to reform the most odious abuses imposed upon their unsuspecting confidence.?

Moreover, this institution now stands stained with the guilt of in-expiable crimes.

When, a few weeks past, the other branch of this Assembly was in a state of disorganization, when the danger of popular commotion and civil strife was imminent, when the people of this whole Union were looking to this capital with intense anxiety and suspended breath, when a single rash man or a single rash action might have occasioned the spilling of torrents of blood—then it was that the disorganizers received aid, comfort and encouragement from the minions of the

throne. Then it was that the full capacity of this odious machinery for mischief was disclosed to us. Then it was made manifest that this system of despotism was calculated to act against the people in their utmost need. As Charles the first levied ship money without the aid of parliament, and relied upon his faculty of levying ship money to enable him to dispense with that Assembly, so the authority of the potentate was proposed as a complete substitute for that of the people in their Assembly, at the imminent risk of violence and civil war. Like the unpardonable sin in the eyes of the primitive christians, this crime admits of neither palliation nor atonement.

We have no relations with such nefarious institutions, except determined and unmitigated warfare, until like that of Amalek, their names shall be blotted out from under the whole Heavens.

Gentlemen argue with their accustomed ingenuity, that as the taxing power is only bestowed on this Assembly by the general grant of legislative authority, that as our own power is only inferential, we may delegate it away to whom we please. Is this argument sound? If granted at all, either inferentially or expressly, is it not granted as a legislative power? What argument can be advanced to show that we may part with one legislative power, that would not be equally available to show that we might part with any other? Senators are involved in the absurdity of arguing the unbounded and illimitable nature of the power from the scantiness and narrowness of the grant. If the taxing power is in this Assembly, must it not be exercised in person and not by deputy? Are we not deputies and delegates ourselves?

The expediency of repealing these enactments admits of no doubt. It is due to public faith that they should be repealed, and adequate and constitutional revenue laws enacted in their stead. We have seen in the former part of this report, that these enactments are irreconcilably repugnant to the constitution. The Judiciary will, therefore, infallibly pronounce them void whenever the question shall be made. Is there any doubt of this? Listen to the voice of Alexander Hamilton, in the 78th number of the Federalist:

“There is no position which depends on clearer principles, than that every act of a delegated power contrary to the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid. To deny this, would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

“Where the will of the Legislature declared in its statutes, stands in opposition to that of the people declared in the constitution, the Judges ought to be governed by the latter rather than the former. They ought to shape their decisions by the fundamental laws, rather than by those which are not fundamental.”

We are admonished by Senators, that great delicacy ought to be manifested in speaking of the action of a co-ordinate branch of the government. This is unquestionably true. But on this Assembly de-

volves the duty of framing rules for the government of the whole society, the Judiciary included. We are therefore compelled, at our peril, to employ knowledge not only of what the Judiciary actually does, but a kind of prescience of what it must and will do in given conjunctures. Else how shall we frame our regulations advisedly and discreetly. It then becomes the peculiar province of the Judiciary committee to give warning to the Senate, when important portions of our statutory enactments, are incapable of being carried into execution by the Judges, because of their repugnance to the constitution. The duty is no doubt an irksome and responsible one, but it shall be boldly and honestly performed, and the interests of the public creditors imperiously demand its performance. It is highly probable that some County Auditors will refuse to perform the degrading and ignominious functions enjoined upon them only by the mandate of irregular and illegitimate authority.

It is still more probable that some taxpayers will refuse to regard, as a rule of civil conduct, the edict of the autocrat commanding them to pay. In either case, legal animadversion is absolutely impossible, for we cannot, in decency, suppose that the Judges would lend themselves to the execution of such enactments as those under consideration. But the public creditors are entitled to the force and the regularity of law for the security of their rights, and it is a breach of good faith to compel them to depend upon voluntary contributions.

EDWARD ARCHBOLD,

Chairman Judiciary Committee.

February, 1849.

N. B. Messieurs. Whitman and Ewing concur in the foregoing report.

REPORT

OF THE

COMMITTEE ON PUBLIC WORKS AND PUBLIC LANDS,

Relative to Rail Roads and Canals.

IN SENATE—March 12, 1849.

The Committee on Public Works and Public Lands, to which was referred a resolution upon the subject of the effect to be produced upon the revenues of the state derived from the canals, by the construction of rail roads parallel thereto, has had the subject under consideration and now reports:

The resolution is of importance, as it touches important interests of our constituents. The attention of the Senate was called to this subject by the author of this report, during the sessions of 1845-6 and 1846-7. He thought that rail road charters had been granted with too much facility, and without such guards as might protect the state works against injurious competition. Many charters had been granted in which the taxing power of the state had been indiscreetly circumscribed—none in which any pains had been taken to secure the transmission of the mails, troops and munitions of war at reasonable rates; none reserving any right to regulate the prices of transportation of persons or property; none fixing a uniform gauge or width of track, an object of the highest importance, the omission of which will cause the most serious inconvenience hereafter, and a heavy expenditure of money in rebuilding many of the roads—none guarding the state canals against injurious competition. Exceptions to these general strictures may be found in a few cases where the right of repeal was reserved, and a few others where the right was reserved to the state to purchase the road.

A majority of the Senate at the beginning of each of the sessions referred to was in favor of such legislation as would secure to the public all these advantages; but for reasons which this committee need not investigate, that majority, before the close of the session, dwindled into a minority, and the most that has been left of their labors may be found substantially in the twelfth, seventeenth, nineteenth, and twenty-first sections of the general rail road act, passed February 11, 1848. By those provisions the taxing power is saved, a uniform gauge of four feet ten inches is prescribed; the General Assembly may, un-

der certain limitations, reduce the price of transportation, and the Governor may arbitrate between the companies and the Postmaster General. No clause is to be found there guarding the interests of the state against the rivalry of rail roads as competitors with our own canals for the carrying trade of the state.

The resolution referred to the committee for consideration asserts—
 “That it is unwise, impolitic and unjust to the tax payers to grant charters to rail road companies to construct lines of rail roads along the lines of the state canals so as to diminish the tolls, and thus cast the whole burthen of the public debt upon the tax paying people.”

The members of the committee to which this resolution was referred suppose it was the desire of the Senate that they should treat the subject practically, and advise the Senate whether, upon the whole, it were best to pass such a resolution now, and not whether such a resolution ought to have been adopted ten or fifteen years ago. Charters have already been granted to rail road companies to construct rail roads along the lines of the canals, and which may to some extent diminish the canal tolls. The evil, if evil it be, is now past effectual remedy, and the committee will but discharge its duty to the Senate and the public by the suggestion of such alleviating considerations as the research of a few days has enabled it to collect.

There is no doubt that the construction of rail roads will add greatly to the wealth of the state, and in that mode to some extent diminish the burthens of our tax paying people. The state also, as the wealthiest and most powerful proprietor, will possess advantages over its poorer rivals that would tell with terrible effect upon companies seeking to put down to too low a rate the prices of transportation upon most of the articles now transported on our canals. But should this remark prove wholly untrue, and the result be that the produce of the farmers of Ohio shall be enhanced in price by more rapid, earlier and cheaper means of conveyance to market, who does not perceive in this, very considerable compensation for the loss of canal tolls?

The transportation of passengers upon our canals, is of slight importance to the revenue, the whole amount last year being less than nineteen thousand dollars. This might all be surrendered, if for the convenience of the people, without difficulty; but it is nevertheless true that the revenue from passengers and passage boats on the canal from Toledo to Cincinnati was much greater last year than the year before, although during more than half the season locomotives were running from Sandusky to Cincinnati. This increase was, no doubt, in part owing to the judicious order of the Board of Public Works reducing the tolls upon the canal.

The effect to be produced upon the transportation of property will depend vastly on the nature of the article transported, dependent, in a great degree, upon the relative proportion of weight or bulk and value. This difference may be sometimes so great that the mere item of interest will be sufficient to give the most speedy conveyance the preference. A ton of manufactured goods may be worth \$10,000. The interest on that sum for one hour is seven cents. Take the article of coal at five cents per bushel, which is fifty per centum above the price of that

article at Zanesville, and allowing 70 pounds to the bushel, a ton would cost one dollar forty-three cents. The interest would not be worth calculating.

In the transportation of persons, and of light freight, there can be no doubt the rail road would enjoy an advantage over the canal; but it may be safely assumed that with the increasing wealth and resources of our state, the transportation of heavy articles will seek the canal in such quantities that we need never entertain the apprehensions that the tolls will fall below what they have been, but on the contrary may believe they will continue to increase in a ratio which will be satisfactory to the people and tend eminently to the diminution of their burthens.

The committee will proceed to state some facts connected with this subject, drawn from the experience of other countries. Before doing so it is proper to remark that in England (from which many of the examples are drawn) all the canals and rail roads are private property. The competition, then, is between one individual or one company and another individual or another company; each seeking to impose the highest toll compatible with its private interest, and neither having regard—as a state proprietor will have—to the great interests of the public, to wit: the furnishing a cheap and commodious transit for the produce of the country.

England was checkered by canals before rail roads were dreamed of. They occupied, of course, the valleys created by rivers, and towns were built up and business and population concentrated upon their borders. When rail roads were introduced they sought the same channels, not only because the levels were to be found there, but because there was the business and the people. They were therefore laid down along side the canals and put an end to the profitable monopoly the canals had enjoyed. The profits of the English canals had been enormous. Shares of stock, costing originally only £100, sold for £500, £1,000 and in some instance for £2,000.

The introduction of rail roads depreciated the value of canal stock. Those who had bought at the high rates were sufferers. The stockholder who had given £2,000 for a share of canal stock which had originally cost but £100, could not receive 5 per cent upon his investment unless the annual profits of the canal were 100 per cent. The canal which earned a net annual profit upon the cost of its construction of 6 per cent, would only pay to this purchaser about one third of one per cent.

In spite of the competition of rail roads the canals of England and the Continent are flourishing. They pay larger dividends to their stockholders than do the rail ways by their side. The Duke of Bridgewater's canal, from Liverpool to Manchester, exceeds the rail road between the same points in length, 40 per cent; but it carries more than four times the freight carried on the rail road. The Leeds and Liverpool canal is much larger and more profitable than the rail road. The Grand Junction canal which has suffered severely from the competition of the London and Birmingham rail road, has, nevertheless increased its aggregate tonnage and its stock is still above par.

In 1846, after ten years competition with rail roads, the dividends of the canal companies between London and Manchester were as follows:

Grand Junction canal.....	6	per cent.
Oxford.....	26	"
Coventry.....	25	"
Old Birmingham.....	16	"
Trent and Mersey.....	30	"
Duke of Bridgewater's about.....	30	"

This last is hypothetically stated, the canal being the exclusive property of one individual, Lord Francis Egerton.

In Belgium the canals are chiefly owned by government, though there are important exceptions. The government also owns the rail roads for the most part rivals to their own canals. The canals carry the coal, ores, iron, and other heavy products of the earth, while the rail roads carry the passengers and light goods on which time is valuable. The canals of Belgium—every one of which is followed by a rail road—appear from a recent official table, to carry from 300,000 to 900,000 tons freight per annum. In 1845, the Belgian government chartered a company to construct both a new canal and a new rail road between the same points and in the same valley. The project was recommended by the engineer of the government in a report setting forth the advantages to be derived from the double improvement—in a canal for the heavy freight and a rail road for the passengers and more valuable merchandise.

The same government recently made large appropriations for the construction of a canal from Antwerp to Liege, notwithstanding that there was an admirable rail road in activity between the same points, of which the length was some twenty per cent less than the shortest practicable canal route. The motive was set forth in the official report, namely, the greater cheapness of transportation of heavy commodities by water.

In France, many millions of francs have been appropriated for the construction of a canal from Paris to Strasburg, by the side of a rail way running between the same points—both works in progress together under the same engineer.

In our own country, one striking example may be found of the ability of a canal to enter into successful competition with a rail road in the transportation of heavy articles. The Reading rail road company and the Schuylkill Navigation company entered into a competition for the coal trade. Both met with great losses, but it developed the coal trade to an extent which encouraged the entire enlargement and reconstruction of the canal, during the progress of which, the trade was entirely monopolized by the rail road. On the re-opening of the enlarged canal in 1847, more than 400,000 tons of the lost trade was at once recovered. In 1848, the canal appropriated to itself the whole of that year's increase of trade, and in addition, abstracted 150,000 tons of that which the rail road retained the year before.

In view of all these facts the committee is of the opinion that no alarm need be felt by the people of the state of Ohio at the rapid pro-

gress of rail roads from the fear that their operation will seriously diminish the revenue arising from the canals. Other evils may flow from their too rapid extension, but it is not the province of this committee to enter upon that subject. In conclusion, the prediction is hazarded that the tolls upon our canals will, by the prudent management of those to whom they are entrusted, and a careful abstinence from too frequent legislative interference with their appropriate duties, continue steadily to increase, and with the increasing wealth of the state, cause, from year to year, a sensible diminution of the public burthens. It was a bold adventure for this young state, when but 21 years of age, to undertake such works as the Ohio and Miami canals. They were constructed with economy and fidelity, at a time when the public mind would have been shocked by the suggestion that the politics of an engineer or a canal commissioner could influence his qualifications. Other works have since been constructed—some, perhaps, of not as obvious utility, and constructed at greater cost, owing, in many instances, to the increased price of labor and the necessaries of life, and in some perhaps, to a want of skill or fidelity in the public agents. But the works are built. The committee believes they will all be found useful, and aid in developing the wealth and resources of this mighty state.

The committee recommends that the resolution be indefinitely postponed.

REPORT

OF THE

STANDING COMMITTEE ON PUBLIC PRINTING.

The standing committee on public printing, to whom was referred the following resolutions, viz;

Resolved, That the standing committee on the public printing be instructed to examine and report,

1st. Whether any contract has been made for the public printing under the law to provide for the state printing, passed on the 12th of March, 1845, and with whom.

2d. Whether the person or persons contracting for the public printing under said law, have on their part so executed their contracts as to entitle them to claim a fulfilment of such contract on the part of the state, have had the same under consideration, and now report:

That a contract was entered into with Charles Scott by the proper officers, for a portion of the state printing, under the act of March 12th, 1845, but said contract was not made according to the provisions of said law, not being awarded to him upon his own bids, but assigned to him by William B. Thrall, a lower bidder, and to whom the printing had been awarded. Said Thrall not having complied with the law by giving the required bond and security, had not on his part perfected the contract, and had, therefore, nothing to assign. Again, the office of contractor for the printing under the law, being an office of trust, is not of a nature to be transferable, and could not be assigned. Said contract with Charles Scott is not, therefore, in the opinion of your committee, binding upon the General Assembly, yielding even the safe and tenable ground heretofore assumed, that each branch of each Legislature has the right to contract for its own printing.

Your committee have also examined the printing executed by said Scott under his said contract, and they are clearly of opinion that said work has not been done according to the law, nor in compliance with the terms of the contract; and that the cost of said printing has been greatly enhanced by a departure from the provisions of the law, and that if

said contract had been legally entered into originally, it has been vitiated by the action of the said Scott. They therefore recommend the adoption of the following resolution:

Resolved, By the General Assembly of the State of Ohio, That the State is relieved from any and all obligations to give any portion of the public printing to Charles Scott, by virtue of any contract to that effect, claimed by him to exist.

Respectfully submitted,

J. R. EMRIE,
A. G. DIMMOCK.

REPORT

OF THE

MINORITY OF THE COMMITTEE ON PUBLIC PRINTING.

The minority of the standing committee on Public Printing, to whom was referred the following Senate resolution, to wit,

“Resolved, That the standing committee on public printing be instructed to examine and report—first, whether any contract has been entered into for the public printing, under the law to provide for the state printing, passed 12th March 1845, and if so, with whom ?”

“Second, whether the person or persons contracting for the public printing under said law, have, on his or their part so executed his or their contracts, as to entitle him or them to claim a fulfilment of such contract or contracts, on part of the State;” have had the same under consideration, and now report,

That Charles Scott, assignee of Wm. B. Thrall, did, on the 13th day of July, 1846, enter into two several contracts in writing, with the State of Ohio, pursuant to the “Act passed 21st February 1846,” entitled “An act supplementary to the act entitled an act to provide for the state printing, passed 12th March, 1845,” which said contracts are now on file in the office of the Secretary of State, uncanceled and in full force. By virtue of said contracts, Charles Scott bound himself with the surety required by law, in the penal sum of *ten thousand dollars*, conditioned for the faithful and prompt performance of his contract, in the execution of the printing ordered by both branches of the General Assembly, specified and set forth in said contracts, and to continue so to execute said printing for the term of three years from the said 13th July 1846.

On the 15th July, 1846, Jonathan Philips, did, in like manner, contract with the State of Ohio, for certain printing in his said contract specified, being the printing of Bills, and printing ordered to be printed in the form of bills, and to secure a prompt and faithful performance on his part, the said

Jonathan Philips gave the surety required by the law. This latter contract also continues three years from the 15th July 1846.

These contracts have been observed by the contractors, and recognized by the General Assembly, the Auditor of State, the Secretary of State, and sustained by a legal opinion of the Attorney General, ordered by the Senate to be placed on file.

It is alledged however, by the majority of your committee, that one of said contractors (to wit Charles Scott) was not a bidder under the law for printing, consequently is not legally a contractor. The fact appears to be, the printing was duly advertised, and bids received as the law directs. Wm. B. Thrall was the lowest bidder and the contract was awarded to him. Mr. Thrall then assigned his contract to Mr. Charles Scott, who entered into the bond, and gave the surety required by law—the law was strictly observed with the single exception that Mr. Scott undertook to execute a contract based on a bid lower than his own.

Your committee can detect nothing in this transaction but what is in the most rigid accordance with justice and propriety; and cannot comprehend the objection made by the majority. The object of the law, manifestly was, to give the state printing to the lowest bidder, who would give the necessary security that the work would be faithfully and well performed; all this was secured by the contract with Mr. Scott. It is immaterial to the interest of the State, whether Mr. Scott or Mr. Thrall done the printing, so that it was done in time, in a workmanlike manner, and at the lowest prices. This was attained by the contracts, and the state had the benefit of them for two years, during which time there is really no just cause for complaint. Whether Mr. Scott entered into a contract to do the printing on his own bid, or the bid of a competitor, whose interest he held by assignment, giving the state the benefit of the lowest bid, was wholly immaterial. The doubts of the majority of the committee are not well founded, and their allegation that Mr. Scott's is not a legal and binding contract, is unsupported and erroneous.

The majority of your committee say the "*office of contractor*" is "*an office of trust*," and is not, therefore, transferable. That Mr. Thrall's bid was not assignable to Mr. Scott. If the majority are serious in that objection, they can perhaps show that the State of Ohio has arrived at last to the point where *state offices* are given to the *lowest bidder*—a proposition very singular if true. The office of "*public printer*" was abolished on the principle of economy, reducing the printing for the

General Assembly to a business transaction. The state invited competition among the enterprising mechanics, and proposed to employ those who would engage to do the work by contract; and to effect that end the office of state printer must be abolished, which was done. Where this new office of contractor proceeds from, your committee cannot discover.

The law abolishing the office of state printer has been a great saving to the state, and the savings may be yet more. But, that much has been effected in that way, is proved from the fact, that work done by the state printer, at a cost to the state of \$8.33 per 1000 Ms, is now done under the provisions of the law, for 78 cents per 1000 Ms. Before the passage of the law of 12th March, 1845, the state printing was a monopoly for the benefit of some favorite. Now mechanics of the state can compete for contracts for state printing, and enjoy equal privilege in becoming employed by the state.

Your committee cannot discover any objection to the contract of Jonathan Philips. He contracted with the state officers authorized by law to contract, on his own bid, and executed his bond, with competent security, and in due form.—So much your committee thought proper to say in regard to the contract of Jonathan Philips.

The majority say that Mr. Scott did “not do his work according to the law,” nor in “compliance with the terms of his contract” with the state; “and that the cost of the said printing was greatly enhanced by a departure from the provisions of the law;” and if said contract had been legally entered into originally, “has been” (for the above reasons) vitiated.”—The extraordinary statement of the majority of the committee required a careful examination of the facts alledged.—The truth in relation to Mr. Scott’s account, however, once ascertained, it will not be difficult to disagree successfully from the majority, while the law fairly administered, will undoubtedly overthrow their conclusion.

The law provides that the Secretary of State, the Auditor and Treasurer of State, shall examine the accounts presented under these printing contracts, together with the printing and the manner of its execution—they shall also correct overcharges, and make such deductions as they shall find necessary, under the provisions of the law. In this manner the account of Mr. Scott has been audited, corrected, allowed and paid. This will appear from the following letter addressed to

“Hon. H. G. BLAKE,

SENATE,

Columbus, Ohio.”

“The undersigned, practical printers, having been requested by you to make a statement in relation to what they did in an examination made by them, at the request of the Auditor of State, of Mr. Scott’s account for state printing, submit the following, each of the undersigned speaking for himself, in relation to his own part in the matter stated.

“The account of said Scott, for the printing of the session of 1846 & 7, was by the Auditor of State submitted to both the undersigned; and the account for the printing the next session, was submitted by said officer (the auditor) to A. B. Newburgh, and in both cases, copies of all the work named in the accounts were submitted therewith. We were requested to *compare* the work with the charges, and to make the *necessary calculations to ascertain if they were correct*; and to give our opinion whether the work was performed in the manner required by law. We made such examination in relation to most of the items in the accounts, and especially in relation to all items involving large amounts, spending, with the account first named, several days, and with the last named account, several weeks in the investigation. We finally gave the auditor a statement of our belief that said accounts *were correct*, and the work done *according to law*.—We noticed that the size of the type which the law required to be used, was in some particular instances, varied from where the nature of the work seemed to render it almost indispensable to do so; but these variations, taken altogether, we were satisfied *reduced* the expense. The only matter in which we thought there might be any possible question, as to whether the accounts were correctly made out, was in relation to the charges for the work usually denominated by printers “figure work.” Being ourselves fully aware of the construction put by former state printers upon words in a former law, which have been copied without variation into the law now in force, and noticing, as we did, that Mr. Scott had put the same construction upon these words which his predecessors had done, we did not feel called upon to express our opinion upon that point particularly, and we therefore did not notice it in the opinion we expressed to the Auditor of State. The construction above alluded to, classes with rule and figure work, all work in which there are figures set in columns.”

S. E. WRIGHT,
A. B. NEWBURGH.

Thus it appears to your committee, that the law has been complied with in all its provisions, and the accounts of Mr. Scott audited and examined for allowance, with due regard to the interest of the state. How or where Mr. Scott has been so unfaithful to his contract with the state as to "vitate" it, is certainly difficult to ascertain. Your committee is free to say, that Mr. Scott's contracts have been faithfully complied with on his part, because the work when done, having been done in a workmanlike manner; and as to the compensation, that was submitted to disinterested persons, (practical printers) who understood all matters connected with the prices of the work, and the law regulating such prices. Where can the majority of your committee find the evidence to support the assertion that Mr. Scott was unfaithful to the state by reason of overcharges in his accounts?—The facts do not exist. What the true amount of discrepancy is between the objectors to Mr. Scott's account, and the amount he would be entitled to receive under the law, as construed by the majority of the committee, the subscriber is not sufficiently acquainted with printing, and the terms of art used by them, to say, but he is informed that the difference is no more than the ordinary occurrence in accounting for so extensive a job. The subscriber is informed from a source worthy of full credit, that the difference would scarcely pay for the readmeasurement of the work, in order to settle the controversy; even supposing the majority made no mistakes, on the subject, themselves.

In conclusion, therefore, your committee would say it would do great injustice to Mr. Scott, to adopt the resolution reported by the majority. That resolution should be as follows: *Resolved* that the state is bound in good faith to give the printing of this General Assembly to Charles Scott and Jonathan Phillips, in accordance with their respective contracts; and that to refuse to do so, on the part of the State officers, will give the said Scott and Phillips a just claim to compensation for such damages, as such refusal may subject them to, respectively.

All which is respectfully submitted,

H. G. BLAKE.

REPORT

ON THE

RESOLUTION AND AMENDMENTS RELATIVE TO THE PUBLIC PRINTING.

IN SENATE—JANUARY 29, 1849.

The undersigned, one of the committee to whom was referred a resolution and pending amendments, relative to public printing, has had the same under consideration, and

REPORT:

That, in the opinion of the undersigned, the original resolutions should pass without being incumbered with said amendment, because the prices now contemplated to be paid, were stipulated in the law previous to the lettings of the same to Messrs. Scott and Phillips.

That the bids were made with an eye to the *letter* of the law and the long established custom of State Printers, relative to the construction of that law.

That the charges made by Mr. Scott are in strict accordance to the law and the usages of his predecessors for many years.

That the wordings of the present, and all other laws, on the subject of State Printing, are identical, so far as the classification of work is concerned.

Mr. Scott's construction of the law coincides with that of his predecessor, Col. Medary. And especially should his construction of the law be admissible when it is sustained by the opinions of experienced and impartial printers, and when it is known that the contract prices are as low as the work can be done in justice to all concerned; and which are much less than the prices formerly paid for like work.

From all the under signed can learn on the subject, the usages of the craft in this city, for many years, have been to class the work under two heads, "Plain," and "Rule and Figure." True it is, however, that according to the technicalities of the craft, there are three classes of work, to wit: "Plain," "Figure," and "Rule and Figure," or "Rule" only. The law contemplates only two classes of work, "*Plain*" and "*Rule and Figure*."

The bids, under the present law, would not, it is reasonable to suppose, have been as contracted for, had the work been classified, as it is claimed technicalities would justify. Hence, the justice of leaving the prices unchanged, as contemplated by the law and the parties interested.

All of which is respectfully submitted,

GEO. D. HENDRICKS.

REPORT

OF THE

COMMITTEE ON FINANCE.

IN SENATE—MARCH 15, 1849.

The Committee on Finance who were instructed to enquire into the expediency of reporting a bill to tax all joint stock Companies, including stage companies, in the same manner, and for the same purposes for which other property is taxed; and also levying taxes in like manner and for like purposes upon those State Stocks which are not protected from taxation by the plighted faith of the State, have entrusted the subject to the undersigned and having their permission, I beg leave to submit the following report, without connecting other members of the committee to this

REPORT,

The principle professed by our present tax law to tax all property according to its true value has long since, in theory, been adopted in this state, though never fully carried out in practice. It not only has the sanction and approval of almost the entire population of the state, but it is believed to be the true and the only true policy of a republican government. So far as our present laws in their detail observe this principle, they ought to be approved and sustained, and whenever they do not observe it they should be altered and amended.

The departures from this principle under the existing laws, consist chiefly in imposing enormous burthens on certain professions and occupations in the shape of poll taxes and licenses, and in the exemption from taxation of a large amount of capital invested in state stocks, and a partial exemption of a still larger amount invested in banking and in joint stock companies of various descriptions, stage companies, &c.

It is not proposed to discuss in this report that branch of the subject which relates to the unjust exactions levied upon pedlars, tavern keepers, and the like, in way of licenses; and the poll taxes levied upon certain professions, further than simply to remark that it is anti-republican, unjust and iniquitous in principle. It is no less iniquitous and unjust that the capital invested in stocks of these various descriptions should be exempt from the taxes, or a portion of them, which are imposed upon other property. While, by the

authority of law, you impose a tax without regard to property, upon the physician or the lawyer, whose only fortune is his industry; while you exact from the pedlar the one half, perhaps, of all he is worth for the privilege of carrying on a business which is recognized as lawful; while, for the same purpose, you exact a bonus from the tavern keeper, without regard to the value of his property; and at the same time permit millions of capital, profitably employed, to go untaxed and free from the burthens imposed upon other property, for the support of government. I say, while these things are suffered and sanctioned by the laws of the land, our boasted equality of rights consists only in the name. It is not true in fact. There is no equality where the burthens of government are not imposed, as well as its blessings conferred, alike upon the rich and the poor; where wealth is respected and labor neglected.

There is now in Ohio more than six and one half millions of banking capital, which, by virtue of the franchises granted by law, is capable of being transformed into an available capital of at least twice that amount. If we legislate capital into the hands of individuals, or the coffers of a company which they have not, there is no injustice in taxing the capital thus created. The law at present not only does not tax the capital thus created at all, but the actual capital of banks is not taxed upon an equality with other property. Without abandoning the principle that banks ought, in justice, to pay taxes on the amount of their circulation, which is their available capital for profits. I proceed to show, upon the authority of the reports of the Auditor of State, that, even upon their actual capital, they pay a much less amount of taxes than other property, at the places where they are located. And it should be remembered too, that whether they pay any tax at all, or not, depends upon the contingency of their profits. If they make no profits they pay no taxes. A contingency which does not exist with regard to any other property. If the crops of the farmer fail, he pays tax upon his land. And though the merchant, mechanic or manufacturer make no profits at all, he pays his taxes upon his capital. Not so with the banker. If his incomes fail to meet his current expenses he pays no tax.

The following statement shows the amount of the capital stock of several banks; the rate of taxation imposed upon other property at the places where these several banks are located; the amount of taxes which each bank did actually pay in the year 1848; and the amount which each one would have paid, if taxes had been levied on its actual capital as upon other property:

NAMES OF BANKS.	Capital stock paid in.	Rate of tax on other property where the several banks are located.	Amount of tax paid by each in 1848.	Amount which each would have paid if taxed as other property.
		Mills.		
Canal Bank of Cleveland, at Cleveland	\$50,000	11.15	\$47 00	557 50
Commercial Branch, at Cleveland	175,000	11.15	1,015 98	1,951 25
Toledo Branch, at Toledo	130,500	21.	623 61	2,740 50
Commercial Branch at Toledo-	120,000	21.	844 88	2,520 00
Seneca County Bank, at Tiffin,	30,000	11.65	205 97	349 50
Dayton Branch, at Dayton ...	154,780	9.20	1,369 50	1,423 97
Sandusky City Bank, at Sandusky City	50,000	15.58	349 95	779 00
Franklin Bank of Zanesville, at Zanesville	80,700	9.20	606 48	742 44
Commercial Bank of Cincinnati, at Cincinnati	50,000	10.	385 50	500 00
Summit County Branch, at Cuyahoga Falls	100,000	7.	307 81	700 00
City Bank of Cincinnati, at Cincinnati	49,800	10.	-----	498 00
Clinton Bank of Columbus, at Columbus	300,000	10.70	1,500 00	3,210 00
			7,265 68	15,972 16

I have selected a sufficient number of banks scattered over the state to show the inequality and the monstrous injustice of the system. This statement shows that these banks pay, in the aggregate, less than one half the amount of taxes which they would pay if taxed upon their capital as other property; and many of them pay less than one third; while the City Bank of Cincinnati pays nothing, as appears from the report of the auditor. It is an insult to the good sense of the community to talk about equal political privileges, while such disparity in the burthens of taxation is countenanced and sanctioned by the law.

The same kind of favoritism, though not to so great an extent, prevails in regard to other joint stock companies and stage companies. I have not been able to ascertain the amount belonging to these companies at the several localities, and therefore cannot present such a statistical view of the subject, as is presented in the case of the banks. But it is ascertained from the report of the

Auditor of State, that the rate of taxation imposed on these companies, for the year 1848, was 7 7-10 mills to the dollar; while tax upon other property was, in many places, as high as ten and eleven, and in others as high as twenty one mills to the dollar.

A difficulty has been suggested in drafting a bill which would tax these companies as other property. But your committee are of opinion that this object may be effected in either one of two ways.

1st. The officers of the company may be required to list the stock of the company for taxation in the place where the principal office is kept, and the assessment be made on the same as on other property at that place. Or,

2d. The certificates of stock may be assessed in the hands of the individual holders. Your committee have seen proper to adopt the latter method.

REPORT

OF THE

MINORITY OF THE JUDICIARY COMMITTEE, ON SENATE BILL NO. 24.

IN SENATE—March 14, 1849.

The minority of the Judiciary committee to which was referred Senate bill No. 24, "concerning the powers and duties of the State Auditor," submit the following report:

As preliminary to the discussion of the various questions growing out of the bill under consideration, and presented by the majority of your committee in their very elaborate report, the undersigned cannot refrain from calling the attention of the Senate to the fact, that independent of the hostility against the further continuance of the laws now sought to be repealed, manifested in the report of the majority, and in discussions that have taken place during the present session of the General Assembly, there is not at this time, nor has there been at any time, any evidence presented to the Legislature that the people of this state are unfavorably disposed towards said laws. Neither by petitions asking for their repeal, nor by expressions of doubt as to the policy of the State adhering to its existing financial system, the foundation and superstructure of which are to be found, and only found, in these enactments, nor by complaints as to the manner in which the various powers and duties conferred and enjoined by these laws on the fiscal officers of the State have been exercised or discharged—by none of these modes, nor by any other mode, by which the people can and do express their disapprobation of public measures, and express their wishes on subjects of public interest, have the people authorized the present legislature to repeal, or even to interfere with the laws, or either of them, against which the majority of your committee have directed so much and such violent denunciation.

It is true, that a few years since when the finances of this State were seriously embarrassed, in common with the finances of almost every State of the Union, and our public credit

was threatened with the desolating consequences that were anticipated would flow from the influences of an unwise and unpatriotic policy on the part of the general government—a period in our political history, when the disreputable accents of repudiation were first heard in our legislative halls, it is true, that at that time, efforts were made by a few unfaithful or misguided representatives of the people of this State, to invoke popular hostility against the laws now sought to be repealed. They were represented as operating unfavorably on the interests of the people, as sources of great and increasing mischief—as hostile to popular rights and subversive of the independence of the legislature. They were described as pernicious engines, the existence of which was inconsistent with the sovereignty of the people, and destructive of their civil and political liberties. The powers they confer upon the Auditor of State were defined to be not only extraordinary, but as tending to the establishment in this State, of a sort of financial feudality in which that officer was made to play the part of a lord paramount, and the people his vassals. Every device that ingenuity could invent, and that political partisanship would sanction, was employed to bring odium upon these laws. But the people were not deceived by the exaggerated colors of misrepresentation in which they were presented to them. They were familiar with the arts of ardent partisans, and well understood the authority of their invective and petulant declamation. They closed their ears against the appeals of the advocates of repudiation—re-affirmed their devotion to the great principle of maintaining inviolate the public faith, and by the firm support of laws the integrity of which is now questioned, fortified the credit of the State and established around it new and valuable safeguards. From the period to which we have referred to the present hour, the people have preserved the most profound silence in regard to these laws. Not a word has escaped them indicating a desire for their repeal. As the hostility against their continuance was *then* confined to a few members of the legislature, so is the hostility *now* so zealously directed against them, confined to but a portion of the members of the present General Assembly. The people are but witnesses, not actors in these hostile demonstrations.

Your committee will indulge themselves in another preliminary observation. They are fully sensible of the embarrassment, that under existing circumstances is inseparable from the discussion of questions relating to State taxation. The burden of the public debt resting upon the people of

Ohio is so great that it is not more natural than proper that they should be jealous of every agency employed in the levying and collection of taxes. A debt-paying people will always be watchful of the means used by those in whose hands are entrusted the administration of public affairs, for the raising of money to meet public demands. It is left to that people who are not disposed to pay their debts, to be indifferent upon such subjects. This jealousy and watchfulness, which when properly exercised are public virtues, and deserving of the highest commendation, may under the influence of intemperate counsels or mistaken impressions, become public misfortunes, and the source of irremediable public calamities. It is painful to the undersigned to be compelled to express the opinion that the tendency of the report of the majority, will be to mislead the people in regard to the subjects discussed in their very elaborate paper, and consequently tend to give a wrong direction to the sentiments of the people in regard to the sources of their taxes, and the manner of their imposition; the causes of their public debt, and the remedy for its extinguishment. While the majority denounce the powers of the Auditor as arbitrary and irresponsible, and seek to hold up that officer before the people, as a public enemy—a sort of political Ishmael whose only mission is to war against their interests and their happiness, they represent the finances of the State as being in that confused, or it may be mysterious condition that defies all investigation, and which they therefore seem to apprehend is a hot-bed of corruption and fraud.

The undersigned respectfully submit, that the spirit manifested by the majority of your committee, in the investigation of the important public measures embraced in their report, is not that spirit of moderation so essential to a just estimate of their real tendencies to advance or obstruct the public good. The severity of their invective—their impassioned denunciations—their bold threatnings—their apparently angry appeals to the people, encouraging them to disregard existing laws, would seem to indicate that they approached the investigation of these subjects, not only with the predisposition to censure, but with the pre-determination to condemn.

That the views of the majority as expressed in their report are erroneous, the undersigned will now proceed to show.

The Bill under consideration contains two sections—they are as follows:

“Sec. 1. Be it enacted by the General Assembly of the State

of Ohio, That so much of any and every act of the General Assembly of this State, as authorizes the Auditor of State to determine the rate per centum to be levied on the assessed value of the taxable property on the grand list for taxation within this State, or to give any notice of such determination to any County Auditor, or to levy or assess or impose any tax on the people of this State, or in any manner to fix or settle the rate or amount of taxation to be paid by the said people, be and the same is hereby REPEALED.

“SEC. 2. That no money, whether arising from taxes, tolls, fines, water rents or from any other source, shall hereafter be paid either for the erection or repair of any public work or works in this State, or for any other purpose, except in consequence of appropriations made by the General Assembly previously to such payment.”

The objects sought to be accomplished by the provisions of this bill, are defined by the majority to be, first, the repeal of the statutory delegation of the taxing power to the State Auditor; and second, the prohibition hereafter of any money to be drawn from the treasury, except in conformity with that clause of the constitution which provides, that no money shall be so drawn except in consequence of appropriations made by law.

We submit, that the effects of the passage of the bill will be very different from those indicated by the objects named by the majority. Were it only proposed to repeal such laws as confer upon the State Auditor the taxing power, or that authorize the drawing money from the treasury without the sanction of constitutional appropriation, the bill, in the judgment of your committee, would be not more innocuous than unnecessary. For at the threshold of this argument we meet the majority, and deny, that any law can be found on the statute book of this State, to which the bill as interpreted by the majority can apply. We deny, that the taxing power or any part of it is delegated to or exercised by the State Auditor, and we as promptly and positively deny, that money is drawn from the treasury except in pursuance of appropriations legally and constitutionally made. The statement by the majority of the objects of the bill, so far as they regard the true questions at issue, is what logicians call a *petitio principii*—the begging the question in controversy. It assumes the existence of that which has no existence, and denounces legislation which can no where be found on your statute book.

But the undersigned are not disposed to shelter themselves under a simple negation of the existence of laws to which the bill as construed by the majority can apply. The true

objects of the bill are disclosed in the argument of the majority, and that argument by reason of its fullness as well as by the ability with which it is conducted, deserves and shall receive at our hands a full and frank discussion.

So far as it regards the first section of the bill, the basis of the majority's argument is to be found in the 5th section of the act providing for the internal improvement of the State by navigable canals, passed Feb. 4th, 1825.

"SECT. 5. That for the payment of interest, and the final redemption of the principal of the sums of money to be borrowed under the provisions of this act, there shall be, and are hereby irrevocably pledged and appropriated, all the net proceeds of tolls collected on canals herein described, and of the rents and profits of all works and privileges, connected with, or appertaining to said canals, and belonging to the State; also, the sum of forty thousand dollars out of the moneys now remaining in the treasury of this State, and thirty thousand dollars out of the revenue to be raised for the year 1825; in like manner there shall be and are hereby pledged and appropriated, the following sums, for the several years hereinafter named, which shall be raised by levying and collecting, for each of said years, such tax on the property of this State, entered on the grand list, and taxable for state purposes, as will produce, exclusive of defalcations and expenses of collection, the sum hereby appropriated for each year: that is to say, for the years 1826, and 1827, respectively, such sum in each of those years as will be sufficient to meet the interest due for each year on all loans, obtained by virtue of this act; for the year 1828, such sum as will produce, together with the net profits of the canals, actually collected and paid into the treasury for the previous year, an amount sufficient to meet the interest payable for the year 1828, on all sums to be borrowed by virtue of this act, and, also, the sum of ten thousand dollars in addition thereto; for the year 1829, such sum as will produce, together with the net profits of the canals, actually collected and paid into the treasury for the preceding year, an amount sufficient to meet the interest payable for the year 1829, on all sums to be borrowed by virtue of this act, and, also, the sum of twenty thousand dollars in addition thereto; for the year 1830, such sum as will produce, together with the net profits of the canals, actually collected and paid into the treasury for the preceding year, an amount sufficient to meet the interest payable for the year 1830, on all sums to be borrowed by virtue of this act, and, also, the sum of thirty thousand dollars in addition thereto; for the year 1831, such sum as will produce, together with the net

profits of the canals, actually collected and paid into the treasury for the preceding year, an amount sufficient to meet the interest payable in 1831; on all sums to be borrowed by virtue of this act, and, also, the sum of forty thousand dollars in addition thereto; and for the year 1832, and each of the years next succeeding, until the expiration of three years after the completion of the canals, hereby authorized to be made, such sum, annually, as will produce, together with the net proceeds of the canals, actually collected and paid into the treasury, for each year, a sum sufficient to meet the interest payable for such year, on all sums which shall have been borrowed by virtue of this act, and, also, the sum of forty thousand dollars yearly, and each of said years, in addition; and for each succeeding year thereafter, such sum as will produce, together with the net profits of the canals, actually collected and paid into the treasury for each year, an amount sufficient to meet the interest payable for such year, on all loans which may have been made by virtue of this act, and, also, the sum of twenty-five thousand dollars for each year in addition, until the said several surplus sums, over and above the amount required to pay the interest on loans, will form a fund sufficient for the redemption of the principal sums to be borrowed under the provisions of this act, when said several sums shall become redeemable, or until the net profits of the canals shall produce the said sum of twenty-five thousand dollars per annum, over and above the amount required to pay the interest on all sums which shall have been borrowed by virtue of this act; and it is hereby made the duty of the Auditor of State, from time to time, to determine the rate per centum, necessary for each ensuing year, to be levied on the assessed value of the taxable property entered on the grand list for taxation, within the State, in order to raise the several sums, hereby pledged and appropriated to the canal fund, for those years; and he shall certify the said rate per centum, and transmit the same to the several county Auditors within the State, from year to year, in season to enable them to assess the tax for the proper year; and the said tax, hereby levied, shall be assessed and collected each year by the proper officers accordingly, in addition to the taxes which may from time to time be authorized by the General Assembly, for defraying the ordinary expenses of government, and for other purposes; and the faith of the State is hereby pledged, that the tax hereby levied shall not be altered or reduced, so as to impair the security hereby pledged for the payment of the interest, and the final redemption of the principal of the sums to be borrowed by virtue of this act; and that no tax shall ever be levied by the legisla-

ture, or under the authority of this State, on the stock to be created by virtue of this act, nor on the interest which may be payable thereon; and further, that the value of the said stock shall be in no wise impaired by any legislative act of this State."

It is charged by the majority, that by this enactment the power to levy taxes is conferred upon the Auditor. Is this law obnoxious to the charge thus preferred?

In reference to this question we submit two propositions; *First*, We maintain that the tax assessed upon the property of the people of this State, to meet the interest and principal of the debt created by the issuing of stocks in pursuance of the provisions of the fourth section of the act of 1825, is created and levied by the act itself. *Second*, We maintain that all the powers and duties conferred and enjoined upon the Auditor, by this law, are strictly of a ministerial nature. *First*. By reference to the third section of this act, it will be seen that for the purpose of enabling the State to construct improvements contemplated by this act, there was created a fund, denominated a "canal fund," to consist of appropriations, grants, donations, money to be raised by sale of stock, "*and the taxes by this act specifically pledged for the payment of the interest upon such stock.*" What taxes were thus "specifically pledged?" Taxes to be thereafter levied by the Auditor—taxes to be created at some future time and by some other act of the legislature, or by the act of some other power. Such is not the reading of the third section. Its language is "*the taxes by this act specifically pledged,*" or what is of the same import, the ellipsis being supplied "*the taxes created and levied by this act*" specifically pledged. To say, that the "taxes" here referred to, relate to "taxes" to be thereafter created, would be perverting the plainest meaning of language, the confounding a present with a future act, and as we shall hereafter see, be in palpable variance with the whole tenor of the act of 1825.

Now by reference to the 5th section of said act, it will be seen what taxes were thus specifically pledged.

That section provides, that, for the payment of the interest and the principal of the money borrowed in pursuance of the provisions of the act, "there shall be, and are hereby" irrevocably pledged and appropriated the net revenues of the canals, together with such *sum* annually, as will with the net profits of the canals, be sufficient to pay the interest and redeem the principal of the money so borrowed. The *sum* to be paid, excluding the revenues from the canals, is the sum to be raised. Its exact amount is determined by

the deficit in the canal fund to meet the annual interest and principal of the debt created in pursuance of the act. The law makes a permanent appropriation of such *sum*. It is to be annually paid into the treasury by the taxable property of the State, until the principal of the money so borrowed shall be finally redeemed. Now this appropriation assumes the existence of a tax, levied for the purpose of supplying it with means for its practical operation. Without the tax no such appropriation could be practically made. The tax is the foundation, the source of the appropriation. The declaration of the act is, that the people of this State shall annually, until the happening of a certain event, (the payment of the principal of the debt,) pay a sum of money for a certain purpose. This declaration of itself creates a *lien* upon the taxable property of the State, corresponding to the sum to be raised, and this *lien* so constituted, and so declared, is the tax and all the tax ever levied, or ever intended to be levied for the purposes set forth in the act. It is true, that the rate per centum of this tax so levied, is not prescribed by the act. It was not practicable for it to be so defined, and hence the necessity and expediency of conferring upon the Auditor the powers objected to. The tax is levied in gross. The people are required to pay a certain sum of money; being the deficit in the "Canal Fund." The rate per centum to be annually paid, is not fixed, but is left with the Auditor from time to time to determine. Is the tax any less a tax, because the rate per centum is not prescribed by the act?

Suppose that the law instead of "pledging and appropriating" a *sum* or *sums* of money sufficient for the purposes named therein, to be raised by means of taxes, had specified the exact amount of such *sum* or *sums*, say, one hundred thousand dollars per annum, and had directed the Auditor, or any other officer to determine from time to time the rate per centum to be levied on the assessed value of the taxable property of the State to raise that amount of money, would not such a provision be not only tantamount to, but, ipso facto, a tax. And will it be seriously contended that there is in principle, or in fact, any substantial difference between the provision of the law as it is, and the hypothetical provision suggested? The law of the last session of the Legislature, providing for the creation of a sinking fund for the extinguishment of the public debt, corresponds in its leading features to the case supposed. It provides for the annual raising a specified sum by taxation, the per centum to be determined by the Auditor. Has it ever been doubted that the operation of that law is to impose an annual tax

upon the property of this State equal to the sum to be raised?

But the language of the latter part of the 5th section of the act of 1825 is, in the judgment of the undersigned, conclusive upon this subject. That section, after prescribing the duties of the Auditor, provides, that "*the tax hereby levied*" shall be assessed, &c.; "and the faith of the State is hereby pledged that *the tax hereby levied* shall not be altered or reduced," &c. Would not this be strange language to employ in regard to a tax to be thereafter levied? and would it not be equally as strange if construed to mean, that by it the Legislature intended to confer upon the Auditor the power to levy such tax? We are told by lexicographers that the words "hereby" and "by this" are synonymous, either relating to something *now* done. They refer to the present not the future. Instead of the phrase "*the tax hereby levied*," the Legislature could have said, "the tax by this act levied." By the use of either phrase the same intent would have been expressed.

In view of these considerations, your committee cannot doubt, that the tax imposed upon the people of Ohio, and consequent upon the law of 1825, was created and levied by that act.

SECOND. Our next proposition is, that the powers conferred, and the duties enjoined upon the Auditor of State by the 5th section of the act of 1825, are strictly of a ministerial nature.

What are these powers, and why conferred? As has been observed, that for the purpose of paying the interest on loans, and creating a fund sufficient for the redemption of the principal sums to be borrowed under the provisions of the act of 1825, that law provides for the irrevocable pledge and appropriation of the net profits of the Canals, and such sum, to be annually raised, as will, with such canal revenues, be sufficient to meet such interest and establish such sinking fund. The nature of the enterprise contemplated by this act, (the providing for the internal improvement of the State by navigable canals), precluded the possibility of computing with exact accuracy either the cost of the proper improvements, the expense incident to keeping them in repair, or the revenues they would yield. Hence, it was not practicable for the legislature to prescribe the exact amount to be raised in addition to the net profits of the canals by which the interest and principal of the loans were to be paid. The difficulty consisted in anticipating what would be the amount of the net profits. The most

the legislature could do, and that it did, was to provide, that the sum should be equal to the amount of the interest on the loan, and such portion of the principal as it directed to be paid, less the amount of the net profits of the canals actually collected and paid into the treasury at the time the assessment was to be made. By this provision, indicating the greatest caution and regard for the public interest, the legislature, although unable to fix the precise sum to be raised, made the ascertainment of that sum both easy and certain. It required that the proceeds of the canals to be applied to the payment of the interest on the loans and the creation of the sinking fund, should be first ascertained, and to supply the deficit, a sum of money corresponding thereto should be raised by taxation. As it was not practicable to specify the sum to be realized by means of taxes, neither was it possible for the legislature to determine the rate per centum necessary to be levied to raise such sum. The duty of determining this rate per centum was enjoined upon the Auditor, and in the performance of that duty *lies all the power* conferred upon that officer by the act of 1825. The language of the statute is as follows:—"And it is hereby made the duty of the Auditor of State, from time to time, to determine the rate per centum, necessary for each ensuing year, to be levied on the assessed value of the taxable property entered on the grand list of taxation, in order to raise the several sums hereby pledged and appropriated, &c.; and he shall *certify the said rate per centum*, and transmit the same to the several County Auditors within the State, from year to year, in order to enable them to assess the tax for the proper year."

The duty of the Auditor, as herein defined, is limited to that of mere computation. He is first required to ascertain what is the amount of the net profits of the canal, (that is, the amount of revenue from the canals less the expenses of keeping the same in repair, &c.,) applicable to the payment of the interest on the loans, and the annual contribution to the sinking fund, and *then* to determine the rate per centum necessary to be levied on the taxable property of the State to supply the deficit, or the difference between the amount of the net profits of the canals, and the amount to be paid by way of interest and the sinking fund. This is, to some extent, a matter of estimate, but it is that kind of estimate in the making of which the Auditor has little or no discretion. It is not for him to determine as to the amount of the proceeds of the canals to be applied as aforesaid, for by the statute he is to take them *as they are actually collected and*

paid into the treasury. Nor is he to say what shall be the sum to be raised in addition to such proceeds of the canals, it being, as before observed, the deficit merely to be supplied. His power and duty are then confined to the mere arithmetical performance of computing the rate per centum to be levied on the taxable property of the State, as already explained. Is not the power thus conferred strictly and purely ministerial? Is it as discretionary a power as that exercised by the appraising officers of the State whose duty it is to assess and fix the value of property for purposes of taxation? Has the Auditor, in contemplation of law, any material discretionary power delegated to him by the act of 1825? He neither fixes the amount of the tax to be levied, nor the kind nor value of the property upon which such tax is levied; and yet we are told by the majority, that the taxing power, which they insist is exercised by the Auditor, "consists of two functions, one of which determines what kind of property shall pay, the other, how much it shall pay."

But the majority urge, that the power conferred upon the Auditor is a legislative power. As the basis of their reasoning, they assume, and are compelled to assume, that that officer, in pursuance of the provisions of the law under consideration, exercises the taxing power—that he, and he alone, determines the amount, and levies the tax for the purposes provided by the law, independent of all legislative direction or control. The exercise of such a power, they insist, is unauthorized by the constitution.

The argument of the majority, is this: the power of taxation is a legislative power, and must be exercised exclusively by the General Assembly; because, by the constitution of this State, all legislative authority is vested in the General Assembly, and cannot be delegated to any other body or person. From this premise, the conclusion is drawn THAT THE LAW OF 1825 IS UNCONSTITUTIONAL, because, in the opinion of the majority, by that act the legislature have delegated the taxing power to the Auditor of State.

The fulness of the remarks already submitted in relation to the provisions of the law of 1825, and the powers and duties of the Auditor as prescribed by that law, render it unnecessary for your committee to reply at any length to the foregoing proposition.

While we are not disposed to controvert the proposition, that the power to levy taxes is a legislative function, and are inclined to admit, that in the absence of any express authority by the constitution, the General Assembly, by vir-

tue of the grant of legislative authority, have the power to levy taxes, we deny that the mere computation of the percentage of the tax assessed, necessarily involves the exercise of any legislative faculty. The distinction between laying a tax, and computing the rate per centum of such tax, is obvious to every legal mind. By the levying or creation of a tax, one of the highest and most sovereign powers of a State is exercised. It is a virtual appropriation of private property to public purposes. It has its origin in the principle, that the State has a lien upon all the property within its jurisdiction, essential to its preservation and support. It is a power incident to the existence of a State. As the right of its exercise is conferred upon the State by the people, it must be exercised in the name and by the authority of the people, and by that department of the government directed by the people. That department, in this State, is the legislature, because it is only *there* that the people are directly represented, and our government is founded upon the maxim "that taxation and representation are co-ordinate and inseparable."

But are any of these considerations involved in the other branch of the taxing power to which we have referred.—The legislature declares the tax to be levied. It determines the gross amount to be paid by the people as a whole. The exact proportions in which they are to pay, are not fixed. They are to contribute according to the assessed value of their property. This is one of the conditions of their consent to be taxed. Let these proportions be determined by whom it may, no injustice can be done to the people. They are protected by the equality of the tax levied. The estimating this proportion or per centage, is performed by the Auditor of State. Is that the exercise of a legislative power?

What is a legislative power? The majority, in answer to this question, refer to a definition found in the thirty-third article of the Federalist. We cheerfully adopt that definition. It is as follows:

"What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the *means* necessary to its execution? What is a legislative power, but a power of making LAWS? What are the *means* to execute a LEGISLATIVE power, but LAWS?—What is the power of levying and collecting taxes, but a *legislative power*, or a power of *making laws* to levy and collect taxes? What are the proper means of executing such a power, but necessary and proper laws?"

By this definition it will be seen, that the power of the Auditor is not a legislative power, unless he possess and exercise the "*power to make laws to lay and collect taxes.*" It

will not be seriously urged that the Auditor makes laws for any purpose. The constitutional authority of the State—the General Assembly—enacted the law under consideration, and all other laws conferring power upon the Auditor, and by them prescribed the whole power and duty of that officer in the premises. Under the superior authority of the legislature the Auditor acts; and it is this subordination, this subjection to the government of a superior authority that makes the power exercised by the Auditor strictly ministerial.

There is another element vital to the constitution of a legislative power, of which the Auditor is measurably, if not wholly, deprived. We refer to the *discretion* which every law maker must necessarily have in the performance of his duty. Divest him of this privilege, and he is no longer a legislator. He may, in the absence of a discretionary power to act, register with fidelity the laws which some superior may direct, but he cannot make laws. Burke, speaking of the qualities of a legislative act, says: "that such an act has reference to no other rule than that of original justice, and its discretionary application." Subject to the constitution, this description of a legislative act—the result of the exercise of a legislative power, is as applicable to this as to the English form of government. In view of this definition of Burke's, is it not idle to talk of the power conferred upon the Auditor as being a legislative power?

But the majority, in the support of their construction of the power exercised by the Auditor, ask with obvious self-complacency, whether the legislature cannot directly do all that that officer is authorized to do by the law under consideration? And if it be competent for the legislature so to act, then they insist that the power exercised by the Auditor must *ex vi termini* be legislative, because the General Assembly has none other than legislative authority, and can perform none other than a legislative act.

While we admit that without the intervention of the Auditor, the legislature could, if so disposed, perform all the services required of that officer by the act of 1825, we are unable to agree with the majority in the conclusions they draw from that admission. It is true, that by the constitution, all legislative authority is conferred upon the General Assembly. But does the grant of this power necessarily exclude from that body all other powers? Has the legislature no other faculty than that of making laws? Has it no judicial functions? Can it not impeach, convict, and punish civil officers? Does it not judge of the qualifications and

elections of its members? Is the appointment or election of an officer, say an United States Senator, a legislative act? Suppose that officer was elected by the people, would the act of the people in that regard, be a legislative act? Such would its character be, if the power employed by the General Assembly to obtain the same result be legislative, for the nature of the act performed in either case is the same.

But, for the sake of the argument, and for no other purpose, suppose that we admit that our construction of the 5th section of the law of 1825, is erroneous; and that by its enactment the legislature did in fact delegate to the Auditor of State the power to levy taxes for the purposes defined by that act. Is the delegation of such a power unconstitutional? The majority argue, that the legislature having no original or independent powers, but deriving all its powers from the people, it cannot under any circumstances, or for any purpose, transfer any such powers. This position the majority assume without referring us to any authority, and above all, to the authority of reason for its support. It is, in fact, the basis of the most imposing argument they have directed against the validity of the law under consideration. Is it a sound position?

Your committee suspect that the majority in their investigation of the subject under discussion, consulted more fully the institutes of Coke and the commentaries of Blackstone, than they did the approved expositions of the principles of government and the powers of a Legislature representing the sovereignty of the people. They have permitted themselves to be misled by legal maxims applicable enough to the relations subsisting between individual members of society, but having no application to the relations subsisting between the Legislature and the source of its powers. The maxims "that a deputy cannot transfer his trust," and "that a power given cannot be transferred," can never be applied to the powers of a Legislature. Impose the restrictions involved in these maxims upon the exercise of such powers, and you cripple if not destroy one of the vital elements of a legislative trust. That element is the power to pass all laws *necessary* and *proper* for the execution of such trust. The fact that every Legislature has and must have the power to pass all *necessary* and *proper* laws for the faithful and effective performance of the trust deputed to it, is the most conclusive refutation of the position assumed by the majority. If for the execution of any power, say, the taxing power, it be necessary to delegate the same to a third party, then a law

so transferring it is *necessary* and *proper*, and therefore valid. We do not claim, that it is competent for the Legislature under the plea of passing laws *necessary* and *proper* for the preservation or promotion of the public interests, to divest itself of the right to re-assume the powers so transferred, when the public interests no longer demand their assignment. For as the power to delegate, grows out of the duty to promote the public interests by all proper means, it follows, that when these interests do not require the Legislature to transfer a power, a law providing for its delegation would not be either *necessary* or *proper*, and therefore not in pursuance of the spirit of the constitution.

For the support of our construction of the powers of the Legislature, as it regards the right of delegation, we are not left to the mere authority of reason. We have the interpretation of the Legislature manifested by the settled policy of the State, a policy that has received the sanction of the people at all times and upon all occasions.

Did not the General Assembly delegate to the Commissioners of the several counties of the State, the power of levying taxes, when by the law of February, 1848, it authorized those officers to "annually determine on the amount to be raised for ordinary county purposes, for bridges, for public buildings, for the support of the poor, for the payment of INTEREST AND PRINCIPAL ON THE COUNTY DEBT, and for the support of common schools?" Did it not in like manner and by the same law confer the taxing power upon township trustees for township purposes, and upon cities and town corporations, for their corporate purposes respectively? Have not laws again and again been enacted by the Legislature, at every session for years past, authorizing the public authorities of towns and counties to subscribe stock in railroad companies and to levy taxes for the payment of such stocks? Have not various grants of incorporation for the construction of turnpike and plank roads been made by the present General Assembly, containing provisions authorizing the levying of taxes by the proper county and township officers? And has it ever been doubted, that in passing these various laws, the Legislature acted in strict consonance with the spirit of the constitution? Would it not have been derelict in the performance of its duty, had it refused to have conferred such privileges upon the people? And yet, if the argument of the majority be sound, that the Legislature cannot legally transfer any portion of the taxing power, but must, under the constitution, exercise that power exclusively, it follows that all

the enactments to which we have referred, are unconstitutional and void. Are the majority prepared to adopt that conclusion?

But we are told by our colleagues, that there is no parallel between the taxing power conferred upon County Commissioners and that exercised by the Auditor of State. They say, that when counties were provided for by the constitution, that instrument in effect and by *intendment*, prescribed for the exercise of those powers of local police, without which their organization could not be continued. Why not continued? Is it not competent for the Legislature to levy taxes directly upon a county for county purposes? Could the Legislature not perform this duty in reference to county interests quite as intelligibly and as effectually as it could the duty now performed by the State Auditor? Is it not a question of mere expediency, how these taxes shall be levied, whether directly by the Legislature or indirectly by county officers? That difficulties, and perhaps serious difficulties, would have to be encountered by the Legislature, should it attempt directly to levy taxes upon the several counties of the State for their local purposes, we have little doubt. Indeed we readily admit that those difficulties would be formidable, and it may be to some extent, destructive of the prosperity of the State, and hence it would be inexpedient for the Legislature to interfere with the powers now exercised by the county officers. But these are considerations addressed to the question of expediency. As such, they are intelligible and of great force, but if addressed to the question of power, they are unintelligible and impotent.

Feeling the pressure of these and like suggestions, the majority, in their report, attempt to reconcile their inconsistency in defending the power exercised by the Legislature in conferring upon County Commissioners the authority to levy taxes as aforesaid, while they deny the legality of the exercise of the same power in regard to the Auditor, by assuming, that from the peculiar organization of counties, the constitution by *intendment* authorized the Legislature to assign to them so much of the taxing power as their necessities from time to time require.

It is very convenient to legalize the delegation of this power to counties, by drawing authority from what the majority call a *constitutional intendment*. Let us examine it for a moment.

If it were intended by the framers of the constitution, that counties, from their peculiar organization, should exercise

the taxing power for local purposes, and that to secure them this right no specific grant in the constitution was necessary, why do not they exercise this power without calling on the Legislature? Why do they not by virtue of their peculiar organization, and independent of all legislative authority, levy taxes for their local purposes? Does not the constitution by "intendment," quite as clearly confer upon them such power, as it does upon the Legislature to confer it upon them on account of their "peculiar organization?"

We confess that after having been told again and again, that the taxing power is the highest power known to a State; after having been assured of the great jealousy entertained towards it by the people of Great Britain, and the restrictions imposed upon its exercise by the British constitution;—after having presented to our consideration the constitutions of several American States, in which the greatest caution is exhibited, in reference to the taxing power, and in which express provision is made that no tax shall be levied except in a well-defined way, we were not prepared to hear the majority advocate the exercise of this power on the intangible and unsubstantial ground of "constitutional intendment."

We trust that if at any time we shall be compelled to abandon the position we have taken in our defence of the law of 1825, so far as the powers of the Auditor of State are concerned, we may not be charged with any intentional disrespect to our colleagues of the majority, if we adopt a like ingenious mode of reasoning, and vindicate the powers exercised by the Auditor on the ground that from the peculiar organization of that officer's department, and the relations subsisting between him and the people of the State, the constitution "does in effect and by unquestionable intendment," confer upon him the power to levy taxes for State purposes. We do not say, that this will be sound reasoning, but we do say, that it is as worthy of consideration when applied to the Auditor as when applied to County Commissioners or Township Trustees.

In view of the foregoing considerations, we feel authorized to say, that if it be, that a portion of the taxing power has been conferred upon the Auditor of State, such transfer of power is clearly sanctioned by the constitution and consistent with the settled and approved policy of the State.

The second section of the bill under consideration, according to the construction placed upon existing laws by the majority of your committee, proposes the immediate repeal

of every enactment that provides for the application of money arising from taxes, tolls, fines, water-rents, or from any other sources, to the payment of repairs on the public works, the interest on the public debt, and the principal of that debt. Among other enactments, it proposes to repeal most of the law of February 4th, 1825, hereinbefore discussed; the act to regulate the receipt and disbursement of the canal fund, passed March 23d, 1840; the act to reorganize the Board of Canal Fund Commissioners, passed March 11, 1843; the act prescribing the mode of appropriations for repairs on the public works, passed March 2, 1846, and many other acts relating to the finances of the State.

If this section shall become a law, its effect will be to change the fiscal system of the State in many of its most vital features. It will introduce new and untried modes of disbursing a large portion of the public revenues. It will institute new relations between the several fiscal departments of the State, establish new modes of keeping their accounts, and to some extent modify their relations to the State and the creditors of the State. It will practically abolish the "Board of Canal Fund Commissioners," which by the 4th section of the law of 1825, *was to be continued until the stock credited by that act should be wholly paid and redeemed, and will withdraw from the creditors of the State the specific securities for the payment of our stocks issued under various laws, which securities were by those laws, in express terms, "IRREVOCABLY PLEDGED" for the payment of the interest and the principal of those stocks.*

The statement of the consequences that will flow from the adoption of the second section of the bill, discloses its importance, and at the same time the impracticability of attempting within the limits of a report of ordinary length, to discuss the various bearings and effects of that section on the interests of this State, if it shall receive the sanction of the Legislature and become a law. We will therefore confine ourselves to a very few suggestions in reference to this section of the bill.

Why is the Legislature asked to give this section the sanction of a law? Why repeal the several enactments above referred to? Have they not been valuable agents to the State? Have they not proved an efficient means for the collection and disbursement of the public revenues? Have they not materially assisted the State in meeting all its pecuniary liabilities? Have they not performed with fidelity all the offices for which they were framed? It is true, that the majority charge that these laws have contributed to the

wasteful expenditure of the people's money. But is this charge well founded? We know of no authority for such an imputation. The majority have not furnished us any evidence in its support. We deny the correctness of the charge. We say that it is not true, that the treasury of the people has received any damage from these laws. True, we have suffered and are now suffering from the unwarrantable and profligate expenditure of the people's money; true, that the vast volume of the public debt now resting so heavily on the good people of this State, is attributable in part to the unfaithful administration of our public finances, to the incompetency of officers who have been entrusted with the charge of our public works, and to the policy of our legislation that obtained during a memorable era in our political history, but the laws now sought to be repealed, are in no sense responsible for any of these things. They neither authorized nor sanctioned these invasions of the public treasury.

The objections urged by the majority against these laws, resolve themselves into the following:

First, they insist that the powers conferred by these acts on the Auditor, Fund Commissioners and Board of Public Works, conflict with the 21st section of the first article of the constitution, which provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law."

If this objection were well taken, it would be fatal to the validity, and therefore the expediency of permitting these acts to remain longer upon the statute book; for no law can be expedient if unsustained by the constitution.

But the objection, in the judgment of the minority of your committee, is not well founded. It assumes, that money is now drawn from the treasury for the payment of repairs and other expenses incident to our public improvements, for the payment of the interest and principal of our public debt, without legal appropriations having been made.

It is a sufficient reply to the argument of the majority to say, that the laws under which moneys are drawn for the purposes above recited, do severally make the necessary and legal appropriations, and in so doing, satisfy the constitution. The issue then between the majority and minority of your committee, resolves itself into a mere question of fact. Do the laws now proposed to be repealed, make legal appropriations for the purposes contemplated by those laws? With the view of abbreviating this report, already grown to an unreasonable length, we will illustrate our position on this subject by confining our remarks to an exposition of the law of

February, 1825, and this we do the more cheerfully, for the reason, that that law is not only the basis of our existing financial system, in the construction of which the other laws referred to have contributed, but it is by express terms incorporated into and made a part of the more important of those laws. The policy established by the act of 1825, is the existing policy in the financial system of Ohio.

As observed already, the third section of the law under consideration, provides for the permanent establishment of a "canal fund," to consist of APPROPRIATIONS, grants, donations, money raised by sales of stocks and taxes, pledged for the payment of interest on such stocks. By this provision, the "canal fund" has a distinct and legal existence. It is an entity, a real, tangible thing, and an appropriation to it is as much and as perfect an appropriation as if made to any other object or for any other purpose. Such an appropriation is the setting apart and designating a certain amount of money for a special purpose. This is the definition of a legal, constitutional appropriation.

The fourth section provides for the creation of a Board of Fund Commissioners. Among other powers conferred upon the Board, are those of superintending and managing the canal fund, borrowing moneys on the credit of the State, issuing certificates of stock for such moneys, and paying the interest thereon.

For the payment of the interest and principal of the sums so borrowed, and which as before remarked constituted a part of the "canal fund," the fifth section provides "there shall be and are HEREBY" (that is, by this act) irrevocably pledged and APPROPRIATED, all the net proceeds of tolls on the canals herein described, and of the rents and profits of all works and privileges connected with or appertaining to said canals, and belonging to the State." In addition to this *irrevocable appropriation*, the section further provides for the irrevocable pledge and appropriation of such sums to be raised annually, by taxation hereinbefore explained, as will with the net proceeds of the canals, be sufficient to meet the interest on the moneys borrowed by the Fund Commissioners, and furnish the sinking fund with the sum of twenty-five thousand dollars per annum. Now all these moneys so appropriated, constitute a part of the "canal fund," and which among other contributions, consists of "APPROPRIATIONS." We see that by the provisions of this law, the net produce of the canals is irrevocably appropriated to the canal fund. We, also, see that to the same fund are appropriated in like manner the sums to be raised by taxes. These taxes are permanently levied

by the act itself; the per centum to be levied by the Auditor of State. After providing for all this, the law proceeds, and as if to remove all doubts as to the question under discussion, expressly declares in the 5th section, that the duty of the Auditor to determine the rate per centum to be levied on the taxable property of the State, is enjoined "in order to raise the several sums hereby pledged and APPROPRIATED to the Canal Fund."

Is not the mere statement of the provisions of the act of 1825, as now recited, conclusive of the question at issue between the majority and minority of your committee? Can it be necessary to add one word by way of argument, to strengthen the position that that act by the most explicit and emphatic terms, makes all appropriations for the purposes contemplated by that act. If any thing further need be said on this subject, we would refer the Senate to the act prescribing the duties of the Board of Public Works, passed March 1, 1846. In the provisions of that very recent enactment, will be found a legislative construction of this question. That act does not provide, as averred by the majority, that the Fund Commissioners shall make appropriations for the payment of repairs and other expenses incident to the preservation of the State improvements, in the sense in which the term "appropriation" is used in this discussion. That act is in strict conformity with the spirit and meaning of the law of 1825. It defines with more precision than the former law, the manner by which monies are to be drawn from the treasury to pay for repairs and other charges upon the public works. It authorizes the Board of Public Works, as the exigencies of the improvements under their supervision may require, to make requisitions upon the Fund Commissioners for the sums needed to meet said exigencies, and those Commissioners having the exclusive charge and control over the "canal fund," apply such portions of the *gross revenues* of the public works as may be necessary to the satisfying such requisitions. Here then is a permanent appropriation, made by law, of so much of the gross revenues arising from the public works, (and these revenues, be it remembered, constitute a part of the "canal fund,") as will be sufficient to keep the canals, &c., in a State of repair, the residue of such revenues (the net produce of the public works,) being appropriated to the payment of the interest on the State debt, as already expressed.

We have already said that this law of 1846 is a legislative construction of the question at issue. We so regard it, because it recognizes the "canal fund" to be under the charge

of the Fund Commissioners, in a manner, and for the purposes explained in a former part of this report, and directs in unmistakeable terms, what portion of that "fund" is to be applied to the payment of repairs, &c., of the public works. In other words, it makes a distinct and permanent "appropriation," of so much of the gross revenues received into the treasury from each of the public works of the State, as is, or may be needed to pay the expenses incident to such works.

Driven from their position, that the several laws aforesaid, do not make the necessary appropriations for the payment of the interest on the public debt, and the preservation of the public works, the majority retreat behind an objection they raise against the authority and validity of appropriations so made.

It is true, this objection here referred to, is not urged as a distinct and independent proposition. It is presented rather as an inference from considerations referred to in the majority's report. The purpose of the objection is not affected by the manner in which it is presented. Its object is to impeach the integrity of the laws now sought to be repealed, and therefore demands our notice.

This objection is founded upon a practical denial by the majority, of the power of the legislature to make an appropriation to take effect after the convening of a succeeding legislature. If sound, it will be fatal to any enactment of the General Assembly now in session, providing an appropriation not to be used prior to the meeting of the next legislature. The majority say, that if an appropriation can be made a quarter of a century in advance—that length of time having nearly elapsed since the passage of the act of 1825—"then it may be made one, two, or three centuries beforehand," and therefore must be illegal. The argument then, is this: the legislature cannot make an appropriation for more than one year in advance—for if it can make it for two years, it can for twenty, and if for twenty, an appropriation can be made for "one, two, or three centuries beforehand." Such an appropriation the majority urge would be illegal, and repugnant to the constitution.

Without stopping to show that sound reasoning is rarely aided by resorting to extreme illustrations, we take direct issue with the majority, and affirm, that the power of the legislature to make appropriations, is not limited to making the same for one year, or any specific number of years in advance of the time when they are to take effect. The power is as broad as the necessities or the interests of the

State. If those necessities or intererests demand an appropriation to be made a century in advance, it is competent for the legislature to so provide by law.

We do not say, that a subsequent legislature cannot suspend an appropriation made in advance, or repeal a law making permanent and continued appropriations. We cheerfully admit, that where an appropriation is not an element of a contract legally entered into between the State and a third party, its continuance depends entirely on the will of succeeding legislatures, and may at any time be revoked. Does not the principle on which this distinction is founded remove all the difficulties encountered by the majority, in reconciling the right of a preceding legislature to make appropriations? Does it not remove the apparent conflict right of between different legislatures? Does it not leave to every succeeding legislature the same independence, the same control over the treasury that belonged to, and may have been exercised by a preceding legislature? The majority discuss the question of standing appropriations as if it were a novel and alarming feature in our public policy. They have invested it with all the terrors that a dramatic imagination can conjure or depict. They have seen armed men where much less formidable opponents only exist. They have felt the presence of a supposed monster, whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane, and yet strange as it may appear after all this expressed apprehension and alarm, to those who may not have happened to contemplate standing appropriations in the same light, it may be affirmed in perfect confidence, that the legislative records of this State, and the United States, furnish indisputable evidence that such appropriations have been made again and again, by both the General Assembly of this State, and the Congress of the United States.

In support of this position as it relates to the legislation of this State, we refer to the act "providing for the election of electors of President and Vice President of the United States," passed February 15, 1820, and also the act to regulate State and Congressional elections, passed February 18, 1831, both of which acts are now in force. By the 12th section of the former, and the 64th section of the latter act, it will be seen that a permanent appropriation is made for the payment of electors by the one, and sheriffs by the other of those sections, the Auditor being directed to allow the sums prescribed, and the Treasurer to pay the same out of moneys in the treasury not *otherwise appropriated*. Under the provis-

ions of these laws, electors of President and Vice President have been paid within the last three months, paid out of an appropriation made nearly thirty years ago.

In further illustration of the legislation of this State on this question, we refer to the 19th section of an act "providing for a uniform standard of weights and measures, passed February 21, 1846. By this law a standing appropriation is made in favor of the State Sealer, without any specification as to the sum to be paid him. That officer is now paid, and will hereafter be paid out of the appropriation provided for by the said 19th section, until the same may be repealed.

The legislation of congress in favor of this class of appropriations, has been so frequent as to preclude the propriety of introducing into this report references to all its acts.

By the act relating to the sinking fund, passed in April, 1802, during the administration of Mr. Jefferson, a permanent appropriation of the annual surplus in the treasury was made for the purpose of paying off the then national debt. The surplus, whether large or small, was directed to be annually thereafter paid to the commissioners of the sinking fund, and by them paid to the creditors of the United States.

In like manner, Congress in 1817, during the administration of Mr. Monroe, passed an act providing for the payment of the public debt. This law was introduced by Mr. Lowndes, of South Carolina, and is that under which our national debt was finally extinguished in 1832. It appropriates ten millions of dollars per annum to the payment of the public debt, and further authorizes the commissioners of the sinking fund to apply any amount of surplus in the treasury to the same purpose. Under the authority so given, the commissioners did during the existence of the debt, apply to its payment as much as fifteen to eighteen millions of dollars per annum.

By the 19th section of the law authorizing the issuing of treasury notes, passed in 1847, the Secretary of the Treasury is directed to "use and apply all moneys which may be received from the sales of public lands after the year 1848, to the payment of interest accruing on stocks issued under said act, and to apply the balance of such fund to the purchase of said stocks at their market value. Here is clearly a standing appropriation of an uncertain amount. The duration of the appropriation is concurrent with the object of its enactment, the payment of treasury notes issued under the said act.

But the most conclusive evidence in favor of the power of Congress and the legislature, to grant standing appropri-

ations for an indefinite length of time, is furnished by the constitution of the United States. The clause in that instrument relative to appropriations coincides literally with that in the constitution of this State. It provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law." The framers of that instrument knew that under this clause standing appropriations could and would be made. Being jealous of standing armies, they were not willing that permanent appropriations should be made in their behalf. They consequently modified the general clause relating to appropriations, and in reference to the support of armies, provided, in the 8th section of article 1st, that "no appropriation of money for that use shall be for a longer term than two years." Why this limitation, unless to prevent congress from exercising its power of making appropriations for an indefinite length of time, for the support of armies—and where does congress acquire such a power, but under the general clause relating to appropriations, and which being the same with the corresponding clause in our State constitution, must have a like construction with the latter. We ask no higher authority in support of our position, than that furnished by the constitution of the United States, and the laws of Congress, made in pursuance thereof.

SECOND. The only remaining objection urged against the several enactments proposed to be repealed by the passage of the second section of the bill under consideration, grows out of a supposed expediency. The majority charge, that these laws have been controlling causes in creating the public debt that is now pressing so heavily on the people of this State, and therefore, are not entitled, and can no longer receive the confidence of those in the production of whose injury they have been such potent instruments.

It will not be expected that in this report the minority of your committee will enter upon an elaborate defence of these laws against the charge that they are responsible for the existing public debt. The history of that debt cannot be intelligibly or faithfully detailed in the limited space that the proper length of this report will permit them yet to occupy. But we say to the majority, that while it is true that the public improvements of this State were made under laws regularly enacted by the constitutional authorities of the State, and to the extent of their legitimate cost, those laws may be regarded as responsible for the existing debt, we deny that beyond that they are justly obnoxious to the charge preferred by the majority. No, a large part of that debt, which is now the subject of so much interest, not only

to the people of Ohio but to the friends of good government every where, has a very different origin from that attributed to it by the majority. The causes of no inconsiderable portion of that debt can be found in the incompetency of many of the officers who were entrusted with the management of our public works during the time that intervened between the years 1836 and 1845—in the profligate expenditures of the people's money during that period of our history; in the introduction of partisan influences in the administration of every department of our State government; and above all, in the unfaithful and unauthorized execution of many laws relating to the construction of public improvements; laws, which if they had been honestly complied with would have saved this state millions of dollars.

What is the true history of this public debt, and to what causes are we to attribute its rapid growth and present vast proportions?

In 1825 the State of Ohio had no public debt. She had exhaustless resources of wealth in her climate and her soil, in her minerals and her water power, but in the absence of artificial improvements, these resources could contribute little to advance her prosperity and her power. Finding, that with all their capabilities to accomplish great and honorable results, without internal facilities for the transportation of their produce to market, they were not unlike a strong man chained, the people of Ohio—having witnessed with admiration the completion of the Erie canal—determined, through their legislature of 1824–5, to connect the waters of the Ohio river and lake Erie by two navigable canals. One of these improvements was to pass through the central, and the other through the westerly part of the State. To secure the speediest and most economical construction of those canals, induced the enactment of 1825, the provisions of which we have examined in a former part of this report.

It will be seen from this statement, that the policy of the legislature of 1825 contemplated to the construction of but two canals. With one or two immaterial exceptions, that policy was adhered to until the winter of 1835–6. At that time, new and unfortunate influences were brought to bear on the legislature then in session. That body turned its back upon the prudent policy of its predecessor of 1825, and adopted new maxims and new men for the government of our public works. It entered upon an extensive, and by no means sagacious system of internal improvements. It discharged from the administration of our public works, the original Board of Commissioners who had secured the con-

fidence of the people by the faithful discharge of their duties, and appointed as their successors an equal number of agents, who, with one or two exceptions, had no qualifications for the place assigned them. In the action of the legislature of 1835-6, the historian of our public debt will trace most of the causes that have led to the existence of the immense burdens now resting upon the people of this State, and which, with any but an honest, industrious and enterprising people, would long since have choked up the fountains of public prosperity and public happiness.

Let us briefly compare the results of the action of these two boards while entrusted with the construction and superintendence of the public works, and see the amount they respectively contributed to the public debt.

That appointed in 1825 continued in office until April, 1836, a period of eleven years. It commenced and completed the Ohio canal, connecting Cleveland and Portsmouth, and that part of the Miami canal lying between Cincinnati and Dayton. The entire length of these two canals is 899 miles. They were built at an average cost of \$13,822,56 per mile. Their aggregate cost was \$5,515,203,69.

The board appointed in 1836, with some temporary changes, remained in office until 1845. It constructed 403 miles of water improvements, being 312 miles of canal, and 91 miles of slack-water navigation. The average cost per mile of these improvements, was \$23,414,91. Their aggregate cost, was \$9,436,211,12.

This exhibit of the cost of our public works discloses the fact, that the average cost per mile of the improvements made by the board appointed in 1836, was \$9,592,35 more than the average cost per mile of those constructed by the board of 1825, and that, although only four more miles in length, the aggregate cost of the former exceeded that of the latter in the sum of \$3,921,007,43.

Taking the average cost of the Ohio and Miami canals as the cost of said four additional miles, and equalizing the length of the improvements constructed by the two boards respectively, and the cost to the State of the same number of miles of canals, &c., made by the board of 1836, exceeded that of those made by the board of 1825 in the sum of \$3,865,717,19.

It may be asked, are not these improvements sources of equal revenue to the State? We answer, no. For while the Ohio canal has, from the date of its completion, yielded an average of net revenue exceeding 5½ per centum on the cost of its construction, and the Miami canal has yielded a

like average of nearly four per centum on the cost of its construction, only two of the improvements, made by the board of 1836, have yielded any net revenue. The Miami extension canal, since its completion, has paid an average of 1 27-100 per centum on the cost of its construction. The Wabash and Erie canal has paid an average on its cost of 2 58-100 per centum. The Muskingum improvement, the Hocking canal, and the Walhonding canal having cost, in the aggregate, \$2,210,068,29, have never yielded sufficient revenue to pay for the repairs and other expenses incident to them. Not only have they failed to contribute anything for the payment of the interest on the cost of their construction, but they have needed, and have received, assistance from the general revenues of the State to keep them in repair. The deficit in the Muskingum improvement fund, that is, the balance due to the State without estimating the cost of construction, is upwards of \$75,000. The deficit in the Hocking canal fund exceeds \$9,000, and in the Walhonding canal, upwards of \$6,000.

We are thus minute in our statement of the condition and cost of the Muskingum, Hocking and Walhonding improvements, because they were constructed in violation of law. This is a grave charge to prefer against those under whose auspices they were built; but it is sustained by testimony that is both imperishable and unimpeachable.

The several laws providing for the construction of these improvements, were passed in March, 1836. They each prescribe, that neither of said improvements shall be commenced until such surveys and examinations are made as will be sufficient to enable the Board of Public Works to estimate accurately their cost. In addition to this, the board is required to be satisfied that they will, when completed, yield a sufficient revenue to meet the interest on the cost of their construction.

The Board of Public Works entered into office, April 4, 1836, a few weeks subsequent to the passage of said laws. At its first meeting, April 7, prior to any surveys or examinations being made by it as to the practicability of constructing said improvements, prior to having any reliable information as to what would be the cost of their construction, or whether they would yield any revenue to meet the interest, or any part of the interest, on the cost of their construction, in a word, without having observed any of the conditions of the laws providing for said improvements, and, in direct violation of the spirit of those laws, the board did, at its said first meeting, "order" that all of said improve-

ments should be commenced forthwith, and to that end called on the commissioners of the canal fund for the necessary means.

We thus see that while the laws were based upon that fundamental and essential maxim in a healthy system of a public credit, "that the creation of debt should always be accompanied with the means of its extinguishment," the administration of the laws by the board of public works, defeated the practical operation of that maxim, by disregarding the provisions of those laws which required such preliminary examinations as forbid the construction of those public works, unless they should yield a sufficient revenue to meet the annual interest on the principal of their cost.

Now look at the sequel of this illegal proceeding. We have shown that these improvements have never yielded sufficient revenue to meet their current expenses, and consequently have never paid any of the interest on the cost of their construction. It only remains to add, that the law providing for the construction of the Muskingum improvement contemplated that its cost would not exceed \$400,000. Its actual cost of construction was \$1,627,318 29. The law relating to the Hocking canal, provided for its construction \$350,000. Its cost was \$975,481 00. The law under which the Walhonding canal was built, provided for its construction \$200,000. Its cost was \$607,268 99. [Vide Appendix.]

Looking at the extraordinary proceedings that marked the administration of the board of 1836, and the enormous cost that attended the construction of the public works commenced and completed under its auspices, we are prepared for the alarming increase of the public debt that occurred during the period of the administration of that board. The total amount of the debt of this State, foreign and domestic, in December, 1836, was \$5,626,664 51. In February, 1845, that debt had reached the fearful amount of \$19,813,412 03, thus showing an increase of our debt, in nine years, to the amount of \$14,186,447 21. Vide Auditors report, Dec. 6, 1836—L. L. vol. 35; also, report of February, 1845, doc. 47 of 1844-5.

In what way have the powers conferred upon the Auditor of State, by the law of 1825, contributed in increasing this

* In this estimate is included \$70,000 for outstanding checks for repairs, &c., on public works issued and not redeemed prior to April 1, 1845; and also, \$536,699 69, being for interest on the State debt due in May and July, 1845, for the payment of which no funds were provided at the time Mr. Brough submitted his report in February, 1845. *Vide Fund Com. Rep., Dec. 1845—Doc. 29.*

immense public debt, or how are any of the provisions of that law, now so violently assailed, responsible for the growth of that debt?

The majority labor under a serious misapprehension when they suppose that the execution of the provisions of the law of 1825 has induced the increase of our State debt. It is rather, when the duties prescribed by that law have not been fully performed, that our debt has increased. This is illustrated by the administration of the immediate predecessor of the present Auditor. The deficits in the interest fund for the six years, from 1839 to 1845 inclusive, amount to \$1,550,490 83, as follows:

For the year 1839	-	-	-	-	\$253,757 42
" " " 1840	-	-	-	-	108,086 90
" " " 1841	-	-	-	-	249,177 42
" " " 1842	-	-	-	-	361,844 80
" " " 1843	-	-	-	-	382,806 01
" " " 1844	-	-	-	-	195,818 28

Making total deficit of six years of 1,550,490 83
 Vide report of Finance Com. S. Jour. 1844-5. app. p. 91.

This deficiency in revenues strictly applicable to the payment of interest on the State debt, was partially supplied by transfers from the general revenues, &c., so that the actual deficiency of accruing revenue applicable to the payment of interest on the debts of the State, during said six years, was reduced to the sum of \$720,858 05. To this latter amount, however, was the debt of the State increased during said six years, a result that could not have transpired, had the Auditor performed his duty as required by the law of 1825, and that of March 16, 1839.

We have now replied in detail to the reasons urged by the majority in favor of the bill under consideration. We have seen that their argument is based upon false assumptions, and that the laws sought to be repealed are not obnoxious to the charges preferred against them. We have seen that the powers conferred upon the fiscal officers of the State have not been correctly understood, or correctly represented by the majority, and that those powers exercised in pursuance of the provisions of existing laws, are not only conformable to the constitution, but eminently salutary and productive of the public good.

If any thing further need be said in vindication of the policy established by said laws, or the influences they have ex-

erted on the interests of the people of this State, we need only refer to the condition of Ohio, its population, wealth, and power, as exhibited in 1825, and contrast the same with what is seen in the present proud and commanding position of this State. Then we had a population numbering less than 800,000, now nearly two millions. Then our taxable property was valued at less than \$50,000,000, now between four and five hundred millions of dollars. Then we were the fourth State, now the third, and rapidly approaching the second place in the national confederacy. Then we had little except the unimproved bounties of nature. We had ample resources for commercial and manufacturing enterprise, but they were unemployed because we had no inducements or capital to employ them. Beyond the demands for a home consumption, our agricultural products were for the most part without a market. We had the inherent power to accomplish whatever the public will might demand, but had no instrumentalities by which that power could be profitably exercised. Our energies as a people slumbered because of the embarrassments that surrounded us. The law of 1825 relieved us from those embarrassments, infused a new and vigorous spirit into our system, and awakened into energetic and decided action the vast and invincible power that belongs to an industrious and unfettered people.

It is now proposed to repeal that law which has contributed so much to our advancement as a State.

Will not its repeal be a violation of our plighted faith? If we understand aright the history and provisions of that law, it is substantially a contract, or rather the evidence of a contract between the State and her creditors. What is its history? As early as 1818 the attention of the legislature was called by the Governor of the State to the importance of connecting by means of a canal, "the waters that flow into Lake Erie, with those that flow into the Ohio river." The enterprise was warmly recommended by the Governor. In 1820 an act was passed respecting the subject. It was, however, premature and inoperative. In 1822, the sentiment of the people approving, the legislature authorized the Governor to appoint an engineer to make surveys and examinations, with a view to ascertain the practicability of the enterprise, and by the same act appointed commissioners to superintend the same. There was little diversity of opinion among the people as to the expediency of constructing the canal. Everything invited them to its favorable consideration. There was an obstacle in the way of the people consummating their wishes. They wanted money. It was not practicable to

construct the canal unless means to that end could be borrowed, and there was a difficulty attending this mode of raising funds which grew out of the fact that Ohio was a young State, and had little available security to give for the loans she would need. Under these circumstances the commissioners applied to eastern capitalists to learn on what conditions, and at what rate of interest they would loan the State the sum of \$2,500,000. The commissioners learned from their correspondents, that the money needed by the State could be procured at a reasonable rate of interest, providing the security was ample. The capitalists required that the State should pledge its faith, and at the same time "make a particular appropriation for the payment of the interest, and the reimbursement of the principal of the loans to be made.

In pursuance of the understanding had between the commissioners and capitalists, in regard to the terms on which the latter would advance money to the State, the former in their report to the legislature, dated January 8, 1825, set forth and recommended the adoption of the leading features of the law of February 4, 1825. That law passed the House of Representatives by a vote of 58 to 13, and the Senate by a vote of 34 to 2:

In view of this history of the negotiations of the canal commissioners, and the adoption of their recommendations by the legislature, we submit, that the act of 1825 was regarded as a contract, or rather in the nature of a proposition for a contract, both by the legislature and those who on the assurances contained therein, advanced money to the State. By the acceptance of this proposition, which was done by capitalists purchasing the stock issued under it, the contract between them and the State became perfect. The State got the money, and the creditors have an indisputable right to insist upon the terms of the contract being strictly observed. But for the securities provided by the law, the capitalists would not have loaned their money to the State. It is not competent for the State, according to any standard of morals known to the undersigned, to deprive the creditors of the specific guaranties named in the law *without their consent*. It is true, that the majority speak of the act of 1825 as providing merely the machinery for the payment of our public debt, and say that the creditors of the State have no interest in the continuance of that particular sort of security, as in its absence the legislature will make ample provision for the payment of their claims. It is a sufficient reply to such reasoning, to say that it in no way effects the question as to

the law of 1825 forming a contract between the State and her stockholders.

That we are not in error in our construction of this law we have the testimony of all its material provisions. By these provisions, the terms of the contract are clearly defined. It was founded on a good and sufficient consideration. The parties were competent to make it, and no injustice or injury has resulted to either party by its consummation. It was understood, too, that the act was to continue in full force until the loans effected under it should be paid. Upon no other assumption can there be an intelligible construction of the terms of the act. It provides for a permanent fund, called the "canal fund," created for the express purpose of securing and paying the stock issued under the act. This sum is irrevocably pledged to the payment of the interest and principal of said stock. Is not such a pledge a virtual assignment of the fund to the creditors? The Board of Fund Commissioners are to continue in office until such stock shall be fully paid. The canal fund is placed under their superintendence and management. Are not those commissioners, being entrusted with the "canal fund" which is pledged as aforesaid, in effect, trustees standing between the State and the holders of said stocks? Has the State any more right in good morals to abolish this canal fund, and thereby deprive her creditors of the security furnished by it, than she would have to annul a formal assignment of the same to the creditors, had such an assignment been made? Would not the effect in either case be the same?

But there is another fact tending to show how this law was regarded by the legislature, to which we will refer. The certificates of stock issued under this act bear upon their face a specific reference to the law of 1825, as being the source of the commissioners authority to issue the same. We submit, that by this reference, the whole law with all its conditions and restrictions became a part of the contract, of which the certificate is the evidence, that is, the contract by virtue of which the stockholder advanced his money to the State. The rights of such stockholder are the same as if the entire act had been recited in the body of the certificate. In this view, suppose it had been set forth in the certificates, "that whereas, the legislature did on the 4th day of February, 1825, enact the following law—reciting in haec verba the statute, and that in pursuance thereof, and subject to the conditions therein contained, the State of Ohio promises to pay to the holder hereof, the sum of one thousand dollars," would not such an incorporation of the law in the certificate, make

that law a part of the contract of the purchase of said certificate, and could the legislature by repealing the law, alter, or in any way affect the rights of the holder of such certificate? If the legislature could legally exercise such a power in the case here supposed, then it might on the same principle cancel or make void the certificate.

But we do not deem it material in this discussion to deny the constitutional authority of the legislature to repeal this law. For granting that it has the power, yet if that power cannot be exercised without violating the faith of the State, its exercise will not receive the approval of the people. It will be an impotent reason to address to them, that the law was repealed, regardless of all considerations of public virtue and public happiness, merely because the legislature has the constitutional authority so to act. The people will sanction no proceeding, the effect of which will be to present them to the world as recreant to their obligations, or that will throw a shade of doubt upon their unyielding allegiance to the great principles of justice and right. The prohibition restraining the several States "to pass any law impairing the obligation of contracts" in their estimation, derives its real weight and value from a higher and more universal source than social compacts or positive institutions. That prohibition, they recognize as flowing from the pure source of religion and morality.

Whatever then, may be the constitutional power of the legislature in the premises, we regard it of little moment in the present controversy. That the laws sought to be repealed are in pursuance of the constitution, we have already shown. That the good faith of the State is involved in their continuance until the debt created by their authority is fully paid, is a proposition, that with a single exception, has at no time been doubted until the present session of the legislature. That exception we have already referred to, and while we are not disposed to charge against those who approved the act that constituted that exception, an intention to repudiate the obligations of the State, we do charge, that the effect of their purpose, (had it been consummated,) would have been in dereliction of the public faith, and a dangerous infraction of the fundamental laws of justice.

What was that act? In March, 1843, while the general appropriation bill was under consideration, a member of the House of Representatives moved to amend the same as follows: "And the Auditor of State is hereby prohibited from levying a greater rate of taxation for canal purposes, than was levied for the year 1842, any thing in any former law to the

contrary notwithstanding." This motion having failed in the House, a similar amendment to the same bill, was offered in the Senate when the bill was under consideration in that branch of the legislature. An explanation of the effect that would have flowed from the adoption of this amendment, we find by referring to the statement heretofore submitted of the deficit in the interest fund for the six years from 1839 to 1845. That statement exhibits the fact that the deficit for 1842, was \$361,344 80. To that extent, the provisions of the law of 1825 requiring the Auditor to raise by means of taxes, a sum which together with the net produce of the canals would be sufficient to meet the interest on the public debt, were not complied with. The security pledged to the creditors of the State by the terms of that law was lessened to the amount of said deficit. Why this was permitted to be, we are not informed. It is sufficient for our present purpose to know, that if like deficits had been allowed for a few years, as they certainly would have been, had the aforesaid amendments received the sanction of the legislature, the State would have been deprived of the means to pay the interest on her debt, and repudiation would have followed as an inevitable consequence. Hence it was, that these amendments were denounced throughout the country as having been offered for the purpose of undermining the public credit, and thereby impairing the public faith. They substantially instructed the Auditor to so reduce the rate of taxes, as would have rendered it impossible for the State to have met the interest on the public debt, except through the agency of loans which the fund commissioners had no authority to make, and which, in view of this attempt to deny to creditors the benefit of securities solemnly pledged to them by law, could not have been made, however ample or explicit the authority might have been in that behalf.

That our construction of the proceedings here referred to is correct, we are sustained by the most respectable authority. Immediately after the adjournment of the legislature of 1842—3, E. W. Hubbard, acting commissioner of the canal fund, and John Brough, Auditor of State and Advisory Fund Commissioner, went to New York on business connected with the finances of this State. Numerous inquiries relating to the condition and ability of Ohio to meet her liabilities, having been addressed to them, they deemed it proper to reply to those enquiries, in the form of a circular addressed to the stockholders of the State. This circular was published in New York, and bears date March 31, 1843. We take great pleasure in incorporating a portion of that circu-

lar in this report. And this we do the more cheerfully, because it not only supports us in the position we have taken in regard to the propositions to amend the appropriation bill referred to, but it also furnishes the most honorable testimony in favor of the "*wisdom, the policy, the honesty, and the integrity*" which dictated the enactments of February 4, 1825, and March 16, 1839."

These gentlemen say in their circular, "To the holders of Ohio Stocks, two inquiries very naturally suggest themselves: Is Ohio resolved to maintain her honor and integrity? and, is she able to do so? The undersigned dislike to adduce facts or reasons upon either of these points; but as the violation of their faith by other States of the Union, has created such distrust in the public mind, that silence might be construed into confession of dishonesty or inability, we will give the facts upon which we base the prompt response in the affirmative, to each of these interrogatories.

"Is Ohio resolved to preserve her credit? It might be triumphantly asked, and that too as a sufficient reply—has she not always done so? No new reason to doubt her faith has risen in late days, except it be the alarm—entirely unfounded in reality—occasioned by the failure of a measure known as the Revenue Bill, introduced into the last legislature. * *

"The intention of the last legislature upon this subject of preserving the State faith, is best ascertained upon other questions than the Revenue Bill, *and in which the issue was directly presented*. The first act of the State (that of February 4, 1825, now proposed to be repealed) which authorized the borrowing of money, made WISE AND AMPLE PROVISIONS FOR THE PAYMENT OF THE INTEREST, AND THE PRESERVATION OF THE FAITH OF THE STATE IN ALL TIME TO COME. The Legislature of 1824–5, established the principle of taxation co-ordinate and co-extensive with the policy of internal improvement; and from the commencement of the system, the people of Ohio have paid taxes; and in all the prosecution of new works, have acted under due notice that they must continue to pay taxes, until their works could be completed, and become of a productive character. The fifth section of the act of 1825 should be familiar to every holder of, or dealer in Ohio stocks. If it has ever been republished in this city, it was many years ago; and as an important Legislative Act, and connected materially with the interrogatory to which we are responding, it is here inserted."

After quoting at length said 5th section, the Commissioners proceed as follows:

"By the act of March 16, 1839, [which is also proposed to

be repealed by the passage of the bill under consideration] 'making appropriations for the new Public Works of Ohio, it is provided, and it is hereby made the *irrevocable duty* of the Auditor of State to determine, assess and cause to be collected, in the manner pointed out by the 5th section of the act to provide for the Internal Improvement of the State of Ohio, by navigable canals, passed February 4, 1825, a sufficient amount of tax to pay the interest on said loans after applying thereto the proper tolls; and the grants, incidents and conditions specified in said fifth section of the last recited act shall extend to the loans made under this act.'—Swan's Ohio Laws, note to page 747.

"THE WISDOM, THE POLICY, THE HONESTY AND THE INTEGRITY WHICH DICTATED THIS ENACTMENT, SPEAK OUT IN EVERY LINE. By it the duty is imposed in the strongest possible form upon the *State Auditor*, to levy an amount of tax sufficient, after deducting the Sinking Fund and defalcations and expenses of collections, to meet, together with the nett proceeds of the Public Works, the interest on the Public Debt. This power, in 1839 was made IRREVOCABLE in its character. The following extracts from the journals will serve to show the light in which the Legislature of Ohio, at its recent session, regarded this important enactment:"

OHIO LEGISLATURE—HOUSE OF REPRESENTATIVES,
MARCH 7, 1843.

"The Appropriation Bill being under consideration, Mr. Byington moved to amend by way of rider, to come in at the end of the third section, as follows:

"And the Auditor of State is hereby prohibited from levying a greater rate of taxation for canal purposes than was levied for the year 1842, [hereinbefore explained] anything in any former law to the contrary notwithstanding.

"Mr. McNulty moved a call of the House, which was ordered, and it appeared Messrs. Curry, Fudge, McCrea and Schenck were absent. Mr. Cahill moved that the House adjourn until three o'clock, P. M., which was lost.

"On motion of Mr. Kelly of Perry, all further proceedings under the call were dispensed with.

"On motion of Mr. Byington the House took a recess until two o'clock P. M."

"TWO O'CLOCK, P. M.

"The question being upon the amendment, Mr. Gordon demanded the yeas and nays, which were ordered, and resulted as follows:

" YEAS—Messrs. Atkinson, Byington, Cahill, Gruber, Henderson, James, Kilgore, Larwill, Martin of Columbiana, McConnell, McNulty, Okey, Pilcher, Reed, Sharp, Warner and Wilford—17.

" NAYS—Messrs. Ankley, Atherton, Baird, Baldwin, Brish, Bowen, Brown, Campbell, Chambers, Chenoweth, Clark, Converse, Curry, Counts, Dike, Douglass, Fisher, Fudge, Fuller, Gallagher, Gordon, Green, Houseman, Humphreys, Johnson, Kelley of Cuyahoga, Kelley of Perry, King, Larsh, Martin of Stark, Meredith, Mudgitt, McClure, McFarland, Nelson, Olds, Pardee, Probasco, Rees, Robinson, Ross, Seward, Smith, Spindler, Steedman, Tuttle, Wakefield, Webb, White, Woodbridge and Speaker.

" I hereby certify that the foregoing is a true transcript from the Journal of the House of Representatives, March 7, 1843.

" (Attest.)

GID. M. AYRES.
Clerk H. R."

**LEGISLATURE OF OHIO—IN SENATE,
MARCH 9, 1843.**

" The Bill of the House, No. 303, making appropriations for the year 1843, being under consideration,

" Mr. Bartley moved that the bill be amended, by adding as section 6th, "that the Auditor of the State shall not have authority to increase the rate of taxation for Canal purposes, over the rate of taxation for that purpose assessed during the last year, till the legislature shall otherwise order."

" And the question occurring on agreeing to the amendment,

" Mr. Hazeltine moved to amend the amendment by adding thereto the following, to wit:

" And the interest on the public debt shall be suspended to the amount of any deficit which may hereby occur in the canal fund.

" Mr. Bartley demanded the yeas and nays, which being ordered were, yeas 5, nays, 18, as follows, to wit;

" YEAS—Messrs. Denny, Ford, Franklin, Fuller, and Hazeltine—5.

" NAYS—Messrs. Aten, Barrett, Bartley, Clark, Harris, Henderson, Jackson, Johnson, Jones, Koch, Lahm, Latham, Loudon, Miller, Mitchell, McConnell, McCutcheon, Newton, Nash, Parker; Ridgeway, Ritchey, Stanton, Updegraff, Van Vorhes, Wade, Wolcott, and Speaker—28. So the Senate disagreed to the amendment to the amendment.

"The question then recurring on agreeing to the amendment offered by Mr. Bartley,

"Mr. Barrett demanded the yeas and nays, which being ordered, were yeas 4, nays 29, as follows, to wit:

"YEAS—Messrs. Aten, Bartley, Koch, and Mitchell—4.

"NAYS—Messrs. Barnett, Clark, Denny, Ford, Franklin, Fuller, Harris, Hazeltine, Henderson, Jackson, Johnson, Jones, Lahm, Latham, Loudon, Miller, McConnell, McCutcheon, Newton, Nash, Parker, Ridgeway, Ritchey, Stanton, Updegraff, Van Vorhes, Wade, Wolcott, and Speaker—29.

"So the amendment was disagreed to.

"A true copy from the Senate Journal.

(Attest.)

THOMAS J. MORGAN, Clerk.

"Both these votes [the commissioners proceed to say] were taken in times, and under the influence of severe pecuniary depression, and when any project for reducing taxes was supposed to possess more of the elements of popularity than any thing else. AND YET THE PROPOSITION TO IMPAIR THE FAITH OF THE STATE WAS VOTED DOWN BY OVERWHELMING MAJORITIES.

"Who, with these facts, can doubt that the State, which has sustained her faith through the darkest hours of trial, is resolved to preserve it, when that preservation, compared with the past, will scarcely cost an effort."

If it be true, as charged by Messrs. Hubbard and Brough, that the proposition to suspend the power of the State Auditor, conferred upon him by the acts of 1825 and 1839, to levy a sufficient amount of tax to meet the interest on the public debt for a single year, was "a proposition to impair the faith of the State," what must we say of the proposition now submitted by the majority of your committee, to take from that officer all the powers conferred upon him by those acts, to repeal the acts, and thereby prohibit the Auditor from ever levying any amount of tax to meet the liabilities of the State? The proposition of Messrs. Byington and Bartley contemplated a breach of the public faith, because, if adopted, there would have been a partial and temporary abrogation of the acts of 1825 and 1839. How much greater and more desolating will be the violation of that faith, if the bill under consideration shall become a law, directed as it is against the further continuance of those laws, and providing for their immediate and entire repeal as well as the repeal of all other acts relating to the payment of the interest and principal of the public debt.

In concluding their report, your committee feel impelled in view of the important consequences that will flow from

the passage of the bill under consideration, to admonish the Senate that the good name of the State is in imminent peril. If that bill shall become a law, in the judgment of the undersigned, the most alarming invasion of the integrity of the State will be the result. That integrity should be vindicated at all hazards. The sentiments, the interests and the happiness of the people of Ohio demand its preservation. Their unsuspected faith, has hitherto constituted one of the most attractive virtues that have adorned and elevated their public character. It has been the source of their power, wealth and dignity. Like the flaming sword that guarded the entrance to the garden of Eden, it has protected the State against every hostile attack, and preserved its "tree of life" from danger and from harm.

There is an indissoluble connexion between public faith and public happiness. They cannot be separated. The altar dedicated to the one, is a fit place for the worship of the votaries of the other. Preserve the former and the latter is secured. Destroy the former and the latter dies. May we not hope that no violent hand will be laid on these pillars in the temple of our State—that no blind Samson may hereafter arise impious enough to bow himself upon them and bury the temple in ruins.

WM. DENNISON, Jr.
S. T. WORCESTER.

ERRATA.

Page 18, line 23 from top, *created* instead of credited.
Page 25, line 11 from bottom, strike out "to."

(A P P E N D I X .)

STATEMENT of the cost of Canals, &c.—their gross receipts, net revenue, interest on cost of construction paid by net revenue, &c.

OHIO CANAL.

Year.	Gross Receipts.	Cost of Collection and Tolls refunded.	Checks issued for Sup rintendence, Repairs and Incidental Expenses.	Net Revenue.	Per cent.int.p'd by net revenue.
1833	\$136,555 70		\$33,741 26		
1834	164,488 98	\$7,860 19	71,853 49	\$84,775 30	1.9
1835	185,684 48	5,836 05	75,875 10	103,973 33	2.3
1836	211,823 32	6,555 45	84,846 81	120,421 06	2.7
1837	293,428 79	7,774 40	115,688 82	169,965 57	3.8
1838	382,135 96	7,893 31	192,344 99	181,897 66	4.0
1839	423,599 84	9,082 52	195,627 13	219,890 19	4.9
1840	452,122 03	9,246 70	113,002 95	329,872 38	7.3
1841	416,202 63	9,190 04	124,263 49	282,749 10	6.3
1842	387,442 22	9,948 36	129,217 51	248,276 35	5.5
1843	322,754 82	11,148 47	114,897 77	196,708 58	4.3
1844	343,710 99	8,442 49	113,209 72	222,058 78	4.9
1845	269,369 33	9,035 39	117,388 84	133,995 10	2.9
1846	336,339 69	9,061 59	69,371 50	257,906 60	5.7
1847	452,530 76	10,168 87	110,559 37	331,802 52	7.4
1848	418,230 37	9,564 59	128,638 69	280,027 09	6.2

Average per centum 5.55

Reported cost, \$4,495,203 69 ; Vide Report Board Public Works, January 10, 1848, page 7.

MIAMI CANAL.

1833	49,946 54	3,920 00	5,668 83	40,357 71	4.0
1834	50,040 99	2,225 00	7,940 37	39,875 62	3.9
1835	52,232 59	2,954 68	16,927 57	32,350 34	3.2
1836	49,754 60	3,659 04	28,768 77	17,326 79	1.7
1837	60,532 55	2,745 83	46,556 91	11,229 81	1.1
1838	79,142 99	4,559 72	22,657 25	41,926 02	4.1
1839	82,722 38	2,942 09	44,991 19	34,789 10	3.4
1840	71,079 62	3,162 56	22,553 55	45,363 51	4.4
1841	71,443 60	2,672 61	50,780 55	17,990 44	1.8
1842	61,887 91	2,925 99	20,634 70	38,327 22	3.8
1843	63,928 52	2,969 81	36,326 05	24,632 66	2.4
1844	77,844 25	2,973 38	22,341 04	52,529 83	5.1
1845	77,158 53	2,638 67	53,521 70	20,998 16	2.1
1846	92,750 62	2,899 61	54,344 29	35,506 72	3.5
1847	114,796 52	3,129 25	30,700 53	80,966 74	7.9
1848	123,030 74	4,183 95	27,800 00	91,048 00	8.9
	\$1,020,000 00		16 years' average		3.8

MIAMI EXTENSION CANAL.

Year.	Gross receipts for Tolls fines and water rents.	Cost of col- lection & tolls refunded.	Checks issu- ed for pay- ment of En- gineers, su- perint'nd'nce and repairs.	Net Revenue.	Per cent of in- terest paid by net rev'ue
1840	3,671 99	200 63	.....	.....	.....
1841	4,230 57	206 22	.....	.....	.....
1842	4,371 06	209 22	.....	.....	.....
1843	7,452 20	206 88	5,579 64	def. 1,334 32	.....
1844	12,723 22	670 04	14,740 51	" 2,687 33	.....
1845	32,479 15	487 43	35,222 65	" 3,230 90	.....
1846	27,735 63	731 30	13,015 18	" 14,089 15	0.4
1847	67,693 66	1,263 47	26,323 31	" 40,106 88	1.3
1848	88,168 35	1,749 53	19,647 00	" 66,772 00	2.1
Cost.	\$3,168,965 59		Average 3 years.....		1.27

WABASH AND ERIE CANAL.

1841	1,269 34	278 47	.....	.....	.....
1842	5,666 11	557 73	.....	.....	.....
1843	33,844 68	1,371 16	.....	.....	.....
1844	48,589 20	1,836 06	12,816 87	33,936 27	1.1
1845	75,767 06	1,662 70	13,198 63	60,905 73	2.0
1846	113,040 99	2,156 01	7,940 53	103,944 45	3.4
1847	109,546 92	2,280 30	13,266 62	94,000 00	3.1
1848	115,741 68	3,596 95	11,326 00	100,818 00	3.3
Cost.	\$3,057,177 24		Average 5 years.....		2.58

MUSKINGUM IMPROVEMENT.

1840	4,236 80	21 30	.....	.....	.....
1841	8,171 26	487 47	.....	.....	.....
1842	17,039 02	1,312 66	.....	.....	.....
1843	22,340 98	1,586 22	.....	.....	.....
1844	29,384 64	1,143 59	15,027 38	13,213 67	0.8
1845	29,808 18	1,184 43	34,256 44	def. 5,632 69	.....
1846	35,027 67	1,191 31	35,805 96	" 1,970 60	.....
1847	50,832 96	1,089 85	43,062 49	" 6,680 62	0.4
1848	29,948 17	1,166 43	116,702 06	" 87,920 32	.....
Cost.	\$1,627,318 29			19,894 29	
	Over drafts.....			95,523 61	
	Balance against Imp't 5 years.....			\$76,629 32	

HOCKING CANAL.

Year.	Gross receipts for Tolls, fines and water rents.	Cost of col- lection & tolls refunded.	Checks issu- ed for pay- ment of engi- neers, super- intendence and repairs.	Net Revenue.	Per cent of interest p'd by net rev'ue
1840	\$1,153 69	55 55	.....	.....	.....
1841	2,518 26	399 97	.....	.....	.....
1842	4,215 07	401 38	.....	.....	.....
1843	4,349 33	400 33	.....	.....	.....
1844	5,286 44	360 54	4,139 41	def. 786 49	.....
1845	5,497 83	495 40	5,580 04	" 577 61	.....
1846	5,301 24	404 53	4,701 13	" 245 68	.....
1847	7,290 14	395 94	7,521 38	" 627 18	.....
1848	8,778 44	436 52	17,425 61	" 9,084 69	.....
Cost.	\$975,481 00			1,032 17	
	Over drafts			10,289 48	
	Balance against Hocking canal.....			9,257 31	

WALHONDING CANAL.

1842	557 55	10 00	.....	.....	.....
1843	610 32	.....	.....	.....	.....
1844	1,976 78	58 34	2,400 00	def.	1,481 56
1845	1,282 95	99 73	2,747 75	"	1,564 53
1846	1,190 71	100 02	1,383 54	"	293 85
1847	2,328 71	100 00	5,055 58	"	2,826 87
1848	1,949 11	107 79	1,783 54	"	58 78
Cost.	\$607,268 99	Balance against W. C...			6,225 59

OFFICE OF THE BOARD OF PUB. WORKS,
COLUMBUS, March 21, 1849.

I hereby certify that the foregoing tables are carefully and correctly compiled from the records in this office.

A. B. NEWBURGH, *Sec'y Board.*

R E P O R T
OF THE
JUDICIARY COMMITTEE ON HOUSE BILL NO. 31.

IN SENATE—MARCH 13, 1849

Mr. Speaker :

The committee on the Judiciary to whom was referred House bill No. 31, to exempt the homestead from sale for debt, have had the same under consideration, and report the same back with an amendment, and recommend its third reading and passage.

In reporting back this bill the committee conceive that a few brief observations will not be deemed superfluous or out of place. As men and as citizens, we rejoice to see the spirit of the present age manifesting a decided tendency towards the virtues of generosity and compassion. This tendency to the milder virtues, deserves to be encouraged in accordance with the principles of perfect justice. But laws should only keep pace with the manners and habits of the community, and great and radical changes ought not to be suddenly or violently introduced. All contracts are understood to be made with reference to the existing laws of the State or community, in which the parties reside. Jurists are in the habit of saying that the law of the contract, is part of the contract. A great and sudden change in the legal remedy for the violation of contracts, would amount to a decree of national bankruptcy in behalf of the least deserving portion of community. The committee conceive that the following principles may be pretty clearly discerned, and ought to govern our action on the subject:

1st. The law ought to be prospective in its operation.

2d. It ought to extend to cases of contract only, and not to trespasses or injuries without that ingredient.

3d. It ought to supply a rule for setting off the exempted property as certain and as easy of application as possible.

As to the first point, that the law ought to have a prospective operation. The bill in its present shape was probably intended so to operate, but in the opinion of the committee,

fails in carrying out that intention. Its language is "any debt, &c., contracted, assessed, or imposed upon such person from and after the passage of this act." The force of the word "contracted," is controled by the force of the words "assessed or imposed," as they stand in this context. Whenever the debt may have been contracted, yet if it remains to be hereafter reduced to judgment, the amount of that judgment must be "assessed or imposed" after the passage of this act. If the bill shall be enacted into a law in its present shape, it will therefore unquestionably have a retrospective operation. As this is a consequence which the members of the Assembly do not intend, we content ourselves with pointing it out, and adding a few observations. If a colony, in a new country, were now about to enter into the social compact and enact laws for the first time, the members of the new society might well determine, that while about to secure to themselves the benefits of law and order, each member should be secure of a little homestead, sufficient for natural wants, safe from revulsions of trade, fluctuations in the currency, or unforeseen calamities. All business would shape itself in reference to the perfect security of this humble asylum of the unfortunate. Credit would be given, if given at all, in reference to this state of things. The law would look with a benign aspect on calamity and misfortune, but would still be compatible with perfect justice. By taking care to give this enactment a prospective operation, we make it as compatible with justice as it would be in the new society just now for the first time settling its organic institutions. We rejoice that this merciful measure can thus be reconciled with justice; for be it remembered, "TO ESTABLISH JUSTICE," was one of the declared motives of our fathers in establishing our present constitution. If ever the time shall come when the Assembly and the people shall become deaf to the voice of justice, we shall be on the high road to perdition.

2d. We say that this merciful provision ought to be confined in its operation to cases of contract, and ought not to extend to trespasses and torts.

The discontented creditor, disappointed of his remedy, will say that this landed exemption is an asylum for indolence, sloth, fraud and evasion. This will be the case in some instances, perhaps in many; for no general rule can by any, the remotest possibility, work well in every instance. Strong reasons can be urged for and against almost every proposed measure, and the human intellect can only perceive that there is a preponderance of argument one way or the other.

But in this case we have an answer ready for the creditor. "Sir, you knew the law, you knew its provisions, it was your own indiscretion to give credit in such a case, but you gave your consent. But the wrong-doer, who breaks a man's arm or beats his person, or kills his live stock, or carries off his property, or rides through his harvests, or throws down his fences, or blasts his character, asks no consent. The line of distinction is as broad and as plain as the turnpike road. The very object of civil government is to repress wrongs and to vindicate rights; and the true opprobrium of government is to leave wrongs unredressed or rights denied. It is true that the wife and children may be sometimes indirectly and as far as the law is concerned, unintentionally involved in the consequences of the guilt of the husband and father. But the statesman, who sets out in search of a rule which will work well in general and never produce any hardship in particular, may chase the rainbow, or hunt for the philosopher's stone, or the immortal elixir, or Aladdin's wonderful lamp. Moreover the liability of property to judicial sale will not always terminate in an actual sale. In most cases it will only stimulate the individual to exempt his property by discharging the judgment rendered against him. And we prefer to leave the convicted wrongdoer under the influence of this stimulus. Its direct tendency will be to prevent the perpetration of wrongs and trespasses. The same reasoning applies in its full force to the case of criminal offenders. Moreover criminals and wrongdoers have not the apology of unforeseen calamities.

The Senate, perhaps, will indulge us in a few short considerations as to how far this policy of exempting property from the payment of debts shall be carried. Some persons advance the idea, that all debts should be turned into debts of honor, and that no legal coercion should be provided for the evasive, the fraudulent, the unwilling or the unfortunate debtor. Others profess to regard such opinions as too wild and visionary to deserve serious consideration. This is an error. Ideas that are found floating in a number of minds, as they must proceed from some general cause, are always worthy of the calm attention of the thoughtful portion of mankind. It is true that in our situation, constituting one of a great confederacy of highly commercial States, in a commercial age, it is not likely that such ideas will ever be reduced to actual practice. Commerce needs all the securities which laws and manners can give her, and fortunately it is dishonorable now to refuse to pay a debt, and ever has been and will so remain. But there are other considerations

connected with this subject. Peace constitutes the end and aim of civil society. States are constituted for the sake of social order. Though all legal remedy for the collection of debts were abolished, credit would still be given, and confidence would sometimes be abused. Then the creditor would go about to exact his penalty in the court of honor. In other words, he would complain of his debtor as base, dishonorable, treacherous and fraudulent. This conduct the debtor would naturally regard as a flagrant injury, and would resent accordingly. The sequel would generally be personal collision and violence, with all their attendant consequences. Injuries retaliated according to the extravagant measure suggested by revenge, would become the groundwork of fresh injuries, until society would be turned into a scene of confusion and bloodshed. The doctrine in question, if carried into practice, would merely resolve society into its original elements and leave the controversies of mankind to be settled by the law of the strongest. Gaming debts are debts of honor, and the fierceness of the rencontres between card-table debtors and creditors, is notorious. Moreover, the question of debt or no debt, is often vigorously disputed. We are not always to take it for granted that a debt is due when one is claimed. The parties have in such cases as much need of a Judge for the mere ascertainment of their rights as in any other. The dealings of mankind are of almost infinite complexity. The property of one man may get into the hands of another, in many ways, such as loans, trusts, bailments, agencies, besides direct bargain and sale. The transactions of mankind dovetail into one another in such a manner as often renders it extremely difficult to determine where an express contract leaves off and a mere implied one begins.

These considerations forcibly admonish us not to extend the exemption of the debtor's property from the claims of his creditors beyond the demands of humanity and compassion. We ought to see to it, that the law shall not do anything inhumane or shocking to the feelings of the community. Beyond that, we need give ourselves no care. We need not study to enrich delinquent debtors. That can best be done by their own exertions. By rashness in this particular, we may introduce new evils into society or aggravate old ones. If this is regarded as a digression, it is hoped that it will be pardoned in consideration of the importance of the subject with which it is connected.

The rule for setting off the exempted property, ought to be as certain and invariable as human wisdom can make it.

A territorial limitation has these qualities in a much greater degree than a pecuniary valuation. The latter is uncertain, shifting and even sometimes capricious to the last degree. The former admits as much certainty as any thing human. The pecuniary valuation opens up a field of controversy and dispute, to which this committee can see neither termination nor limits. The territorial limitation shuts up this field in cases to which it is applicable. It is not applicable to town or village property. The limitation of forty acres will sometimes fall short of the value of five hundred dollars, the sum which the committee proposes as the pecuniary limit. In remote settlements and new districts, such a lot of land will not sell for a large sum. But it will always produce a great abundance of the necessaries of life, and will produce as much where its pecuniary value is least as where it is greatest. For its pecuniary value will be least in the new districts enjoying a virgin soil.

The law need only study to do nothing unfeeling or inhuman. It need take no care to enrich those who fail in their duty, either from guilt or misfortune, or even to establish a scale of equality between them. Many will never possess themselves of property notwithstanding all our care. Poverty will always exist. We are as little able to banish it entirely from the community by law, as we are to relieve men from the consequences of sloth, or improvidence, or dishonesty, or extravagance, by legislation. The statesman who would set out to cure all human ills by means of human laws, might well engage in an adventure in company with the Knight of La Mancha.

Haste and pressure of business must be our apology for the imperfections of this report.

EDWARD ARCHBOLD,
Chairman Judiciary Committee.

- COLUMBUS, March 13, 1849.

REPORTS

OF THE

MAJORITY AND MINORITY OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS.

IN SENATE—March 13, 1849.

The standing committee on Privileges and Elections, to which was referred the certificates of election of the members of the Senate elected the present year, have had the same under consideration and now report:

That on the second Tuesday of October, A. D., 1848, pursuant to the constitution of Ohio, the following named gentlemen were duly elected Senators, to represent their several and respective districts, in the General Assembly, until the second Tuesday of October, 1850:

From the counties of

Franklin and Delaware—William Dennison, jr.

Medina and Lorain—Harrison G. Blake.

Perry, Hocking, and Fairfield—Henry C. Whitman.

Miami, Darke, and Shelby—Jacob S. Conklin.

Stark—John Graham.

Henry, Lucas, Wood, Ottawa, and Sandusky—James Myers.

Huron and Erie—Samuel C. Worcester.

Seneca, Hancock, and Wyandott—Joel S. Wilson.

Licking—Samuel Patterson.

Knox and Holmes—Asa G. Dimmock.

Harrison and Jefferson—Pinckney Lewis.

Wayne and Ashland—Andrew H. Byers.

Trumbull and Geauga—John F. Beaver.

Portage and Summit—Lucien Swift.

Clark, Champaign, and Harrison—Harvey Vinal.

Your committee are of opinion that, from the evidence contained in the certificates presented by the above named gentlemen, they are duly elected Senators in the General Assembly of the State of Ohio, and entitled to seats respectively for the term of two years from the second Tuesday of October, 1848.

The certificates conform substantially to the law regulating the election of Senators.

The certificate of John H. Dubbs, Esq., elected from the second senatorial district of Hamilton county, presented to your committee a case of some difficulty. The extraordinary character of the certificate, and the abstract furnished by Mr. Dubbs, demands that the evidence of his election be brought to the special notice of the Senate. The following is a true copy of the paper referred to:

State of Ohio, Hamilton county, ss.

It is hereby certified, that at the general election held within and for the county and State aforesaid, on the 10th day of October, 1848, for State and county officers, John H. Dubbs had 6,539 votes for Senator to the State Legislature for the said county of Hamilton. And that the said John H. Dubbs was duly elected a Senator in the State Legislature, for the said county of Hamilton and State aforesaid, he having received the highest number of votes given for that office at said election for that office, and as appears by the poll book of said election, duly returned and opened at the office of the Clerk of the Court of Common Pleas of said county.

[L. s.] In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 19th day of October, 1848.

E. C. ROLL, *Clerk*
Court of Com. Pleas Hamilton Co.

The foregoing certificate was presented by Mr. Dubbs, and in pursuance thereof he obtained his seat and was sworn.

From an examination of the journals of each branch of the General Assembly, it will appear the practice has been to read the certificates and credentials of members claiming to have been duly elected, and therefore entitled to participate in the informal organization; but that practice has been for some years abandoned. That course seems to have been pursued heretofore previous to the election of speaker and other officers.

And your committee is not aware of any good reason why that practice, so obviously necessary to prevent imposition and irregularity, has been dispensed with. The case under consideration fully demonstrates the soundness of the former rule. If the law districting the State, and the certificates of members claiming an election and seats, had been actually read, (as the case presupposes they were,) then it must have appeared that Mr. Dubbs had been imposed upon by the negligence of the clerk of Hamilton county, and other evidence should have been resorted to for the purpose of enabling him to take his seat in conformity to the law. That course, which your committee think was unwisely abandoned, would have demonstrated by the record that no such senatorial district existed as that supposed and set forth in the certificate referred to.

Any and every attempt to get into a seat in the General Assembly, in defiance of the law or through the instrumentality of surreptitious

certificates, should be alike guarded against. The injury resulting to the public welfare, is as great in the one case as the other.

Touching the matter of election and returns, the obvious requirements of the law can be readily determined by looking to its ultimate object, which is certainty. Reasonable certainty is all that is requisite in the first instance, and that may be attained at once by reference to the law, and reading the certificate or credential at the time the member presents himself to be sworn into office. That process, so simple and convenient, will produce the certainty the law requires, which is readily comprised of three essentials. First, the person elected; second, the office to which he is elected; and third, the district which elected him.

That certainty is provided for by law, consequently the certificate or credentials of election, must bear upon its face evidence satisfactory on those essential points.

The adoption of any less safe rule will introduce a disgraceful system of double dealing and pretended cases of *prima facie* right—will admit persons, at the organization of the General Assembly, who have not a shadow of truth and justice to support their claims. By the constitution of the State of Ohio, each branch of the General Assembly is made the judge of the "*qualification and election*" of its own members. No other tribunal can determine authoritatively such questions for it.

That part of the duty of the representative in each branch of the legislature, is judicial in its character, and he should therefore call to his aid the rules of evidence and construction by which legal certainty is attained. This rule well accords with common justice and common sense. To continue a precedent which gives a claimant a right to his seat, *prima facie*, upon a paper which, upon ordinary inspection, proves to be a mere nullity, would be, to say the least, an unworthy trifling with candor, and a gross dereliction of duty. Precedents of that character will soon furnish other ways of getting into the halls of representation, than that directed by the constitution and laws—nay, independent of the will of the people and in defiance of their votes.

Your committee will first examine the question whether the Senator from the second district of Hamilton county (Mr. Dubbs,) has presented such a certificate as entitles him to his seat in this Senate. It would be unworthy of the name of argument, if it was predicated on mere punctilio or matter of form. The certificate being vicious in substance, is a mere nullity. If the Senate, by connivance, will permit a practice to go on which admits gentlemen to seats in this hall without reading or examining their credentials or certificates, it will ere long be found in a dilemma, from which it will gladly extricate itself. Seats, though improperly obtained, are sometimes held, and legislation controlled or prompted, as the case may be, by persons claiming to be members, but without more than a mere shadow of right. That is an evil which should be carefully avoided. A prompt and truthful discharge of duty alone can prevent future legislatures from being overwhelmed with fraudulent certificates of election, prepared to suppress the right and trample on the integrity of the law.

The statutes of the State have provided for the certainty contended for by your committee. The law, by complex provisions, has vindicated itself against that looseness which those who administer it seem to indicate. The duty of magistrates and clerks is so clearly defined, that mistaking it, as widely as in this instance, is some evidence of design to evade it.

No officer, or other person, disposed and desiring to discharge, in good faith, the duties arising from the law, could well mistake the fact that Hamilton county is divided into two senatorial districts ; and that similar duties are required from clerks and others, in regard to each of these districts, as though they were respectively formed of distinct counties. The intention of the law is so plain that it would be a useless waste of time to demonstrate it.

The certificate presented by Mr. Dubbs at the organization of the Senate, contains no evidence that he is entitled to a seat in this body. It is nowhere hinted in the paper presented by him that he was duly or otherwise elected Senator from the second district of Hamilton county, or at an election held in said district. It is certified that, at an election held within and for the county of Hamilton, on the 10th Oct. 1848, Mr. Dubbs had 6,539 votes *for Senator to the State Legislature for Hamilton county*. This allegation is true, or it is not true. If it is true, Mr. Dubbs has not been duly elected, and is therefore not entitled to his seat ; and if it is not true, he has been imposed upon by the ignorance or fraud of the clerk of the court of Hamilton county. In either case, the certificate, without other evidence, does not entitle Mr. Dubbs to his seat. Nay, more, if the certificate be true, it is rendered certain he was not duly elected, and should be ejected from his seat.

The clerk moreover certifies that Mr. Dubbs was "*duly elected a Senator for Hamilton county*." The remarks apply to the second allegation that were applied to the first, and, if true, would leave Mr. Dubbs without color of title to the seat he now occupies.

The further allegation of the certificate is, that Mr. Dubbs "*had the highest number of votes given at said election for Senator for Hamilton county*."

Suppose the fact to be as stated by the clerk, yet it is not evidence that Mr. Dubbs had the highest number of votes for Senator in the second senatorial district of Hamilton county, and that he was therefore "*duly elected*." The whole certificate, if truthful, denies that Mr. Dubbs was elected in or for the second senatorial district of Hamilton county, and affirms that he was elected in and for the county of Hamilton, which necessarily precludes his title to his seat.

Let it be assumed that the clerk certified, "at a general election held in and for the township of Fulton, Mr. Dubbs had 6,539 votes for Senator in the State Legislature for said township, and that he had the highest number of votes given for that office at said election, and was therefore duly elected ;" will it be contended that he had any just right to participate in the organization of the Senate, or that he should hold his seat after using such evidence in obtaining it ? Certainly not. And it is submitted whether the same reasons that tend to make the

last proposition extreme and almost ridiculous, do not apply to the certificate now under consideration.

Your committee are compelled to believe, from evidence contained on the face of the certificate, that the pretended certificate of election presented by Mr. Dubbs, is a studied evasion of the law by the clerk of the court of common pleas of Hamilton county. But whether intended or not by the clerk, the precedent furnished by him must become the most pernicious, if persisted in and allowed to succeed with impunity. Let it be once tolerated that he whose duty it was to administer, as well as obey the law, may mistake and falsify facts appearing of record, manufactured records will then as effectually corrupt the pure stream of justice as the undetected false-witness himself can do. The public offices, in the hands of ministerial servants of the public, will be converted into shops for fraud, and records will be prepared to order to aid in suppressing the law, unless the present case is met with prudent firmness.

On the 26th January, 1849, Mr. Dubbs presented to the Senate a certified "abstract of votes given at the general election held within and for the county of Hamilton, on the 10th October, 1848;" which was referred to the committee on Privileges and Elections. The following is a copy of the said abstract, so far as relative to Senator :

HAMILTON COUNTY—Senator, Second District.

Wards and Townships.	Dubbs.	Burgoyno.
Cincinnati—Fourth Ward	524	10
Do Ninth Ward	665	370
Do Tenth Ward	856	343
Millcreek—North Precincts	224	240
Do South do	1067	375
Springfield township	302	222
Sycamore "	401	204
Columbia "	317	239
Anderson "	336	109
Greene "	311	183
Colerain "	395	100
Crosby "	230	104
Whitewater "	176	73
Symmes "	138	66
Delhi "	154	73
Fulton "	239	250
Storrs "	91	82
Miami "	113	116
	4494	2436
Dubbs' majority	2058	

From the general abstract submitted to your committee, it appears that John H. Dubbs had four thousand four hundred and ninety-four votes for Senator, in the second senatorial district of Hamilton county; that he had the highest number of votes, and was therefore duly elected. Your committee beg leave to offer the following resolution:

Resolved, That John H. Dubbs, Esq., was duly and constitutionally elected a Senator, in the General Assembly of the State of Ohio, from the second senatorial district of Hamilton county, and is therefore entitled to his seat, for the term of two years from the second Tuesday of October, 1848, pursuant to an act to fix and apportion, &c., passed Feb. 18, 1848.

All of which is respectfully submitted by the majority of said committee.

JOHN F. BEAVER, *Chairman*.

MAJORITY REPORT
OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS IN THE
CASE OF VALENTINE CHASE, ESQ.

The standing committee on Privileges and Elections, to whom was referred the certificate of election of the Hon. Valentine Chase, Esq., and the evidence and depositions filed in the contest for the seat of Mr. Chase by John H. Elliott, have had the same under consideration and now beg leave to report:

That it appears, from the evidence submitted to the committee, Mr. Chase was appointed and commissioned by his excellency, Gov. Bobb, a *notary public*, for the county of Butler, for the term of *three years*, (if so long he behaved well,) from the eleventh day of December, 1847, (being the date of said commission,) pursuant to an act of General Assembly, entitled "an act for appointing notaries public," passed February 7, 1816."

It further appears, from the evidence before us, that Mr. Chase, in virtue of said commission, and as such notary public, on or about the first day of March, 1848, and at divers times after that day, and before his resignation, did act as such notary public and exercise the functions of said office, by taking the proof and acknowledgment of deeds and other instruments of writing. That Mr. Chase acted under said commission from the time of his appointment above mentioned until the 30th day of October, 1848, when he resigned his office, by letter directed to the Governor of the State.

It further appears, on behalf of the contestor, that said Valentine Chase, Esq., was, at the time of the election, on the 10th day of October, A. D. 1848, the incumbent of the office of *Commissioner of Insolvents*, which office he had and held from about the first day of June, 1844, until the seventeenth day of October, subsequent to his said election.

On the 17th day of October, A. D., 1848, Mr. Chase deposited with the Clerk of the Court of Common Pleas of Butler county a communication as follows:

"To the Court of Com. Pleas of Butler county, O:

"My resignation of the office of Commissioner of Insolvents of Butler county, to which by this court I was heretofore appointed, is hereby respectfully tendered, to take effect from this date.

"(Signed)

VALENTINE CHASE."

Your committee further report, that it appears from the abstract of votes given for Senator in said senatorial district, duly certified by the clerk of the court of common pleas of Butler county, that Mr. Chase had 3,503 votes for Senator, and the said John H. Elliot had 1811 votes for the same office. That due notice was given of this contest by the said John H. Elliott to Mr. Chase, on the 28th day of October, 1848, as required by law.

The 26th section of the 1st article of the constitution of Ohio, under which the alledged incapacity of Mr. Chase arises, inhibits "any person holding a lucrative office under the authority of the State, from being a candidate for, or holding a seat in the General Assembly."

Under this clause of the constitution, assessors of a county have been declared ineligible. Robert Linsie was returned a member of the House of Representatives from the county of Athens. His seat was contested by Edmund Dorr, (who was next highest in votes,) on the ground that Mr. Linsie held the office of county assessor at the time of his election.

The House of Representatives on contest, and after full discussion, held Mr. Linsie was ineligible to hold a seat in the General Assembly, and that Mr. Dorr was not entitled to the contested seat, but that the same was vacant. (See H. Jour., 1825-6.) The same result was had in the contested seat of John Coddington. Mr. Coddington was elected to the lower house from the county of Medina. Lothrop Seymour, the next highest in votes, contested his seat because Mr. Coddington held the office of county assessor at the time he was elected. In accordance with the rule laid down in Linsie's case, the House declared Mr. Coddington's seat vacant, so far as the election was concerned at which Coddington was a candidate. (See H. Jour. 1832-3, pp. 16, 48, 61.) William Fee was elected to the lower house from Clermont county, being, at the time of his election, *inspector*. The House held that the office of inspector rendered Mr. Fee ineligible to a seat in the General Assembly. (See H. Jour., 1815-16, pp. 7, 33, 37.)

Your committee are of opinion that the county offices above mentioned are of equal grade, at least, with those held by Mr. Chase. By the act of March 12, 1831, county assessors are elected for two years from the day of election, and until a successor shall be elected and qualified—he was bound to take the oath of office prescribed by the constitution, to give bond and sureties in \$2000, payable to the State of Ohio, on condition, &c. The fees annexed to the office was a per diem of one dollar and fifty cents.

The office of commissioner of insolvents was created by one of the same revised statutes. By the act of March 12, 1831, courts of common pleas of the several counties are empowered to appoint commissioners of insolvents. They shall hold their office three years, and until a successor is appointed and qualified; they shall give bond with sureties in not less than \$1000, payable to the State of Ohio, conditioned for the faithful execution of the duties of said office; they shall take the oath prescribed by the constitution, and may occupy a room

in the public buildings. Lucrative fees are annexed by law to the office, with the means of enforcing prompt payment.

By the act of Feb. 7, 1816, the Governor is empowered to appoint and commission notaries public. They shall hold their office for three years, (if so long they behave well); and previous to entering upon the duties of that office, they shall give bond to the Governor for the time being in the penal sum of \$1500, conditioned for the faithful performance of the duties of notary public; they shall also take an oath or affirmation to discharge the duties of the office honestly. Fees sufficiently large to render the office lucrative are annexed to it by said law and the amendments thereto. These trusts are declared, by the law creating them, to be offices; they are held under the authority of the State, and your committee are of opinion they are lucrative within the meaning of the 26th section of article 1 of the constitution.

It has already been incidentally stated, that Mr. Chase, after the election, resigned the offices before mentioned as held by him. The office of commissioner of insolvents was resigned before he received his certificate of election as Senator, and the office of notary public after. His certificate is dated Oct. 19, 1848.

Your committee ask leave further to say; that the resignation of an office which renders its holder ineligible to be a candidate for, or holding a seat in the General Assembly, after election, will not restore the person to eligibility. Such is the rule laid down in Waitsel Hastings' case. Mr. Hastings being coroner of Knox county, was, while coroner, elected to the House of Representatives from Knox county. He resigned the office of coroner before taking his seat. On contest it was determined, in the House, that the resignation was too late. Mr. Hastings was therefore declared ineligible. (See H. Jour. 1817-18, pp. 15, 16, 20.) Your committee, in conclusion, beg leave to report the following resolution:

Resolved, That Valentine Chase, elected as a Senator in the General Assembly from the senatorial district composed of the county of Butler, being at the time of election, on the 10th October, 1848, the holder of the offices of commissioner of insolvents and notary public, was therefore ineligible to a seat in the General Assembly, under the 26th section of the 1st article of the constitution.

All of which is respectfully submitted by the majority of the committee.

JOHN F. BEAVER, *Chairman*.

MAJORITY REPORT
OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS IN THE
CASE OF GEORGE D. HENDRICKS.

The standing committee on Privileges and Elections, to whom was referred the certificate of election of George D. Hendricks, and the notice of contest by Samuel Mays, and the evidence and depositions in the matter of said contest, have had the same under consideration and now ask leave to report:

That it appears, in the evidence before your committee, that Mr. Hendricks was appointed deputy sheriff of Preble county by Lot Lee, Esq., high sheriff of said county, on or about the 30th day of December, 1846, which appointment was duly approved by the court of common pleas of Preble county, in January, 1847. That Mr. Hendricks held and exercised the functions of said office of deputy sheriff, from the time of his said appointment until the 9th day of October, 1848, when he resigned, by writing, as follows:

"Oct. 9, 1848. I do hereby resign and relinquish the within appointment.

"Signed, GEO. D. HENDRICKS."

This resignation is written on the petition presented by Mr. Lee to the court, praying the approval of the appointment of Mr. Hendricks as his deputy. The fact of resignation, as well as the date and time at which it purports to have been done, having been fully proved, your committee find that Mr. Hendricks did not hold the office of deputy sheriff at the time of his election, on the 10th of October, 1848.

It further appears, from the evidence before the committee, that Mr. Hendricks, at the time of his election as Senator, on the 10th October, 1848, was the holder of moneys which came to his hands as such deputy sheriff, by collection made in virtue of said office. And it appears further, that said moneys were paid over to plaintiffs' attorney on the writ, after the said election, and before taking his seat. That Samuel Mays gave due notice of this contest to the said Geo. D. Hendricks, on the 26th October, 1848, and that he, the said Mays, was, at the time, a qualified voter, residing within the senatorial district composed of the counties of Montgomery and Preble.

Your committee are of opinion that said George D. Hendricks was not ineligible to a seat in the General Assembly at the time of his elec-

tion, nor was he a holder of public moneys at the time of taking his seat within the meaning of the 28th section of the first article of the constitution. Therefore, the committee ask leave to report the following resolution :

Resolved, That George D. Hendricks, the sitting member from the senatorial district composed of the counties of Montgomery and Preble, was duly and constitutionally elected a Senator from said senatorial district, and is constitutionally entitled to hold his seat for two years from the second Tuesday in October, 1848, as Senator in the General Assembly of the State of Ohio.

All of which is respectfully submitted.

JOHN F. BEAVER, *Chairman*.

MINORITY REPORT
OF THE
COMMITTEE ON PRIVILEGES AND ELECTIONS IN THE
CASE OF VALENTINE CHASE, ESQ.

The undersigned, a minority of the standing committee on Privileges and Elections, to whom was referred the certificate of election of Valentine Chase, Esquire, the sitting member from the county of Butler, and the evidence and depositions filed in the contest for the seat of Mr. Chase, by John H. Elliot, Esq., have had the same under consideration, and now beg leave to submit the following report:

From the evidence on file, it appears that at an election held within and for the county of Butler, on the second Tuesday of October, A. D. 1848, being the tenth day of said month, for State and County officers, Valentine Chase had three thousand five hundred and three votes for Senator in the General Assembly of the State of Ohio; and that John H. Elliott had one thousand eight hundred and thirteen votes for the same office; showing a majority for Mr. Chase, of one thousand six hundred and ninety votes. It also appears from the papers and evidence in this case, that the right of Mr. Chase to a seat as a Senator by virtue of said election, is *contested* by said John H. Elliott, on two grounds:

First, That at the time of said election he held a "*lucrative office*" under the authority of this State, to wit, the office of Notary Public.

Second, That at the time of said election he held a "*lucrative office*" under the authority of this State, to wit: the office of Commissioner of Insolvents, by the appointment of the Court of Common Pleas, within and for the county of Butler and State of Ohio.

Notice of contest was duly and legally served by the contestor on the sitting member, together with notice of the time and place of taking depositions, as provided by the statute. (See Swan's collated statutes, page 314.)

In the examination of the case as *made out*, and carefully comparing the testimony on file, with the law on the subject, *four* distinct and separate propositions are presented:

First. Did Mr. Chase, at the time of said election, hold the office of Notary Public?

Second. Did Mr. Chase, at the time of said election, hold the office of Commissioner of Insolvents of Butler county?

Third. Is the office of Notary Public a *lucrative office*, within the meaning of the 26th section of the first article of the constitution of the State of Ohio?

Fourth. Is the office of Commissioner of Insolvents a *lucrative office*, within the meaning of the said clause of the constitution?

If the first and second of these propositions are determined in the negative, the third and fourth must fall as a matter of course.

Upon an examination of the statute regulating the appointment of Notaries Public, it will be readily discovered that it requires the existence of three essential facts, in order to constitute any person a Notary Public:

First. "That he shall be appointed and commissioned."

Second. "That he shall give bond to the Governor for the time being, in the penal sum of fifteen hundred dollars conditioned, &c."

Third. "That he shall take an oath of office."

The undersigned is clearly of the opinion that unless the existence of all three of the foregoing propositions are clearly and beyond all doubt *proved*, in the case before the committee, Mr. Chase cannot be considered as holding the office of Notary Public at the time of the election. This view of the case will at once appear to be correct upon a careful examination of the statute, passed February 7, 1816, entitled "an act for appointing Notaries Public." (See Swan's statute, page 601.)

The office of Notary Public is not an office named in the constitution, but is created by the statute above referred to; the appointment of which is conferred upon the Governor, whose duty is to "*appoint and commission*" Notaries Public. And it is expressly declared by the same act, "that such Notary Public shall be entitled to hold his *office* for three years, if so long he behave well, and *previous* to entering upon the duties thereof he *shall* give bond to the Governor for the time being in the penal sum of fifteen hundred dollars, and *shall take* an *oath* or *affirmation*, &c., and each Notary Public *thus appointed and qualified*, shall use and exercise his office, &c."

It will be seen by the provisions of the law above cited, that it is expressly declared that each Notary Public *before* entering upon the duties of his office, *shall give bond* and *shall take* an *oath* of office. Those requirements are evidently made *conditions precedent*, and the person who may have been appointed and commissioned a Notary Public, is wholly and entirely unqualified to discharge the duties of his office until he has complied with them. This view of the case is fully sustained by the law itself. The closing paragraph of the 2d section of the act above recited, expressly declares, "that each Notary Public *thus appointed and qualified* shall use, &c.," referring evidently to the manner of his *appointment* and the *terms* of his qualification. For if it be decided that the office of Notary Public is "lucrative" and that the mere fact of the issuing of a commission by the Governor to an individual, would constitute him a Notary Public, it would be within the power of the Executive to render ineligible every

person who might be a candidate for a seat in the General Assembly; for the section of the statute which gives the Governor the power to appoint, leaves the *number* in each county discretionary, and gives him the power to appoint and commission whomsoever he may choose, whether solicited or not.

In order to fortify this view of the subject still further, take an example or two. The office of Justice of the Peace is elective, and the power is given to the people of each township in this State to elect at least one Justice of the Peace, who shall continue in office three years. The 11th section of the act to provide for the election and resignation of Justices of the Peace, passed January 31, 1831, declares "that whenever any person is elected to the office of Justice of the Peace and *receives a commission from the Governor*, he shall forthwith take the necessary oath of office, and *before* he shall be deemed *legally authorized* to discharge any of the duties of his office, *shall enter into bond, &c.* This statute is in almost precisely the words of the statute relative to the appointment of Notaries Public, and in both cases the taking the oath of office and giving bond is required *before* the person appointed or elected is considered in law qualified to act.

By the 26th section of the 1st article of the constitution, a "Clerk of any Court of Record," is declared to be ineligible as a candidate for, or have a seat in the General Assembly. And by the 9th section of the 3d article of the constitution, the power to appoint the Clerks of the several Courts is expressly conferred upon the Judges of the respective Courts. The 6th section of the act to organize Judicial Courts, passed February 7, 1831, provides that each Clerk "shall *before* he enters upon the execution of his office, take an *oath or affirmation, &c.*, and shall *also* give bond with sufficient securities to the State of Ohio in the penal sum of ten thousand dollars, &c." So well settled is this principle, that it has been held by the Supreme Court that the order of appointment of a Clerk, after it is entered upon the Journal, may be rescinded, and that the office is within the control of the Court until the *official bond* of the nominee is approved. (See *State vs. Hamilton Co.*, 7 O. R. part 1, p. 134.) Judges of the different Courts are also declared to be *ineligible*, by the constitution. The statute provides that "each Judge of the Supreme Court and of the Court of Common Pleas, *before* they proceed to execute the duties of their office, shall *take an oath or affirmation, &c.*"

Now, supposing that on the 9th day of October, 1848, Mr. Chase should have been appointed by the Governor to the office of Judge, or should have been appointed by the Judges of the Court of Common Pleas of Butler county, to the office of Clerk of said Court, and should have failed in either case to take the oath of office or give bond as provided for in the statute, would he have been *ineligible* within the meaning of the constitution?

The undersigned has thought proper to refer to these matters before alluding to the testimony on file, and inasmuch as the majority of the committee have declared that Mr. Chase did hold the office of Notary Public at the time of his election. The undersigned is of the opinion that great care should be taken before declaring a man ineligible to a

seat in the General Assembly because of any *alleged* constitutional inability. The right of representation is the most sacred of all political rights, and ought not to be lightly dealt with. The will of a majority of the people as expressed through the ballot box, ought to be *respected and obeyed*, unless the person upon whom they have bestowed their suffrages is clearly and beyond a doubt *ineligible* under the constitution. The constitution is the fundamental law of the State and overrides all others, and is subservient only to the constitution of the United States. It would seem to be right and proper that the same amount of testimony should be required by the Senators in order to enable them to determine the right of members to seats upon this floor, that would be required by a Jury of twelve men to try an issue of fact between two individuals in which a question of dollars and cents was involved.

The depositions on file go to show the following facts :

Wm. Bebb, swears that on or about the 11th day of December, A. D. 1847, he issued a commission as Notary Public to Valentine Chase of Butler county, for three years, and that he is *informed* and *believes* that said Chase tendered his resignation by letter, dated the 30th day of October, 1848.

F. Van Durren testifies, that some time in February or March of 1848, *Valentine Chase*, as *Notary Public*, certified to the acknowledgment of a deed for him.

William Becket, testifies that in July, 1848, Mr. Chase took his acknowledgment to the plat of an addition to the town of Hamilton, and that he also took the acknowledgment of one or more deeds made by him, during the last summer.

Jesse Corwin, testifies that some time about the first of October last, or thereabouts, he cannot state the time precisely, he asked Mr. Chase if he was a Notary Public ; to which Mr. Chase replied that he *was*, and about that time he took the acknowledgment of said Corwin to a mortgage, &c.

This is the entire amount of testimony going to show that Mr. Chase was, on the tenth day of October last, a Notary Public. The question next presented is, is this evidence sufficient to prove the fact? The undersigned is of the opinion that it is not, and in forming this opinion the minority of your committee have been the more careful, from the fact, that the majority of the committee are gentlemen of great legal ability.

It will be recollected that the statute requires the person appointed to the office of Notary Public, "*previous* to entering upon the duties thereof," to give bond to the Governor, &c. Was this done? There is no testimony before the committee going to prove that fact. *Gov. Bebb* was called on as a witness, and all that is proved by him is the simple fact that a commission was issued. The question may well be asked here, Why was not Gov. Bebb interrogated as to the fact whether Mr. Chase ever gave bond or not? This will appear the more obvious from the fact that the law required the bond to be given to him, and he was the only person by whom it could be properly proved.

He was introduced as a witness, the fact if it existed, was an important one, the question was not asked, and the conclusion is *irresistable*, that the bond had not been given.

This of itself appears to be sufficient to satisfy the mind of the subscriber, that Mr. Chase had never been legally qualified as a Notary Public; but to make the case still stronger, the constitution, 1st sec. 7th art., requires that "every person who shall be chosen or appointed to any office of trust or profit under the authority of this State, shall *before* entering on the execution thereof, take an oath or affirmation to support the constitution of the United States and of this State, and also an oath of office." The law regulating the appointment of Notaries Public, requires an *oath of office* in precisely the same words. No testimony has been introduced which tends to prove that ever Mr. Chase was sworn into office, or took the oath required by the constitution and the law. The law does not point out who shall administer the oath, but it is clearly made one of the three essential requirements necessary to qualify him to discharge the duties of the office, and in the opinion of the subscriber ought to be *proved*.

But it may be urged that Mr. Chase, the sitting member, exercised the functions of his office by taking the acknowledgment of different persons to various instruments of writing, that he admitted he held the office of Notary Public, and that he *resigned* after the day on which he was elected.

So far as the first and second of these objections are concerned, the minority is of the opinion that although he did exercise the duties of Notary Public, and did say that he held the office—yet if he had never given bond or taken the necessary oath, these facts would not make him one; and his official acts would, to all intents and purposes, be null and void, and would be so held by the judicial tribunals of the State; and if he never was legally qualified, his resignation would amount to nothing one way nor the other, and he would only be resigning what he never *held*. The minority therefore unhesitatingly come to the conclusion that Valentine Chase, the sitting member from the county of Butler, did not hold the office of Notary Public on the tenth day of October, A. D. 1848.

The second question next presents itself, viz: "Did Mr. Chase, at the time of his election, to wit: on the 10th day of October, A. D. 1848, hold the office of Commissioner of Insolvents of Butler county?" The power to appoint Commissioners of Insolvents is conferred upon the several Courts of Common Pleas in the State. (See Swan's Statute, p. 440.) And the same provision relative to giving bond and taking an oath of office, &c., as in the case of a Notary Public, exists, and in almost precisely the same words; the bond is to be given to the State of Ohio, in such sum as the court may require, not less than \$1,000, to be approved of by the court, and to be lodged with the county treasurer of the proper county. The oath of office is to be taken before the court, &c.

No evidence whatever exists, or at least none has been introduced, *tending even* to prove that Mr. Chase ever gave bond, or ever took the necessary oath.

James McBride testifies that he is the clerk of the Court of Common pleas of Butler county, and produces a certified copy of the record of said court, showing that on the third Monday of May, A. D. 1844, said Valentine Chase was appointed a Commissioner of insolvents for Butler county. The copy of the record referred to is in these words: "Butler county, ss: Be it remembered, that on motion Valentine Chase, Esquire, is appointed Commissioner of Insolvents for the county of Butler, to serve according to the Statute, *on giving bond in the sum of one thousand dollars.*"

The witness, Mr. McBride, also testifies that from the time he entered upon the duties of clerk, which was on the 14th or 15th day of March, 1847, Valentine Chase had been the acting Commissioner of Insolvents up until the 17th day of October, 1848, when he resigned. No other testimony whatever has been introduced tending to prove that ever Mr. Chase gave bond or took the necessary oath.

The question may well be asked, why was not so important a fact (if it existed) proved? It was, by the very terms of his appointment, made a *condition precedent*, and is a matter of record and a proper subject of proof, by the introduction of a copy of a bond duly and legally authenticated, and will not, of course, be presumed to exist in the absence of all proof. Here the undersigned might, with perfect safety, rest the whole matter, but in view of the importance of the question, he begs leave to present one other view of the second proposition, and which is worthy of examination.

The act of March 12, 1831, (see Swan's Statute, p. 441,) says that Commissioners of Insolvents, so appointed and qualified, (referring to the manner of their appointment and qualifications,) shall hold their office for the term of *three years*, (unless sooner removed by court,) *and* until their successors are appointed and qualified. The question which here presents itself is this, that if it be presumed that Mr. Chase had given bond and taken the necessary oath of office, was he either in law or in fact Commissioner of Insolvents of Butler county on the tenth day of October, A. D. 1848.

The evidence introduced to sustain this part of the case, is a copy of the record showing his appointment under date of the third Monday of May, 1844, being a period of about four years and five months prior to said tenth day of October, 1848. From this state of facts it is evident that Mr. Chase did not, at the time of his election to the Senate, hold the office of Commissioner of insolvents; his term of office having expired on the third Monday of May, 1847. This conclusion is irresistible, unless it be argued that the peculiar wording of the statute, under which he is appointed, would compel him to act "until his successor was appointed and qualified." The law under which the court acts in appointing a Commissioner of Insolvents says: "He shall hold his office for the term of three years, (unless sooner removed by the court,) *and until* his successor is appointed and qualified."

The majority of the committee have not seen proper to examine this part of the question at all, and the undersigned is therefore com-

pelled to submit his own views without the benefit of a counter argument. The wording of the law would seem to *indicate* that it *was* the intention of the law makers, who framed the act to be understood as providing that the person so appointed should serve for three years, and if no one should be appointed in his stead, or he should fail to be re-appointed, that he would nevertheless continue to fill the office. But this view of the question will at once be seen to be erroneous upon a careful examination of the grounds on which it rests. Subsequent legislatures have viewed the question in the same light in which the subscriber views it, as will be seen by the act of February 19, 1846, (O. L., Vol. XLIV: p. 50,) by which act it is expressly provided that "whenever the office of Commissioner of insolvents shall be *vacant*, or in case of death, absence, or inability of the Commissioner, his duties shall temporarily be discharged by a master commissioner in Chancery." Thus showing conclusively that the expiration of the term of service for which the person was appointed, was considered as creating a vacancy in the office, otherwise no vacancy would ever happen until the incumbent either did resign or moved out of the county. The statute was so framed, in the opinion of the undersigned, for the purpose of providing for the contingency which would happen where the term, for which the incumbent was appointed, expired during the vacation of the courts in the several counties.

The Constitution, Art. 6, Sec. 1, provides for the election of a Sheriff in each county, and also provides in express terms that they "*shall continue in office two years, and until their successor is elected and duly qualified.*" This would seem to present a still stronger case, for the reason that it is a constitutional provision, and any law passed in violation of its provisions, is in truth and in fact no law at all, but is absolutely and entirely null and void.

The General Assembly, in 1824, (see Swan's Statute, p. 859,) passed a law in which it is provided, "That whenever the term of office, for which any Sheriff shall have been elected, has expired, and no person shall have been elected and qualified to discharge the duties of sheriff, the Coroner of the proper county shall perform all the duties, and be vested with all the powers of sheriff." Numerous examples of a similar character might be referred to, but those already referred to would seem to be sufficient to put the question beyond a doubt in the mind of every man.

The third proposition is next in order, and shall be next considered. The question is one not susceptible of actual proof, but of construction merely, and must be determined more by the rules of common sense, when applied to the particular case under consideration, than from anything which may be said upon the subject, and depends entirely on the construction which may be given to the word, *lucrative*. The 26th section, 1st Art., of the Constitution, renders every man who holds *any lucrative office under the authority of this State, ineligible as a candidate for, or to have a seat in, the General Assembly.* The question may, with propriety, be divided into three parts. *First*, is the trust

of Notary Public *an office*? *Second*, is it held under the authority of this State? *Third*, is it *lucrative*? The first and second of these are admitted. The statute which creates the office, declares it to be an office, and it is held under an appointment directly from the Governor of the State, and therefore under the authority of the State. The third and last part of the question is the only one about which there exists any doubt.

The records of former legislatures furnish little or no evidence upon which to base an opinion. Different legislatures have decided differently upon questions of this kind.

Lyman Parcher was returned a member of the House of Representatives from the county of Lucas, at the session of 1845-6, (see House Journal, 1845-6, pages 13, 162, 164, 790,) and at the time of his election he held the office of Commissioner of Lucas county. It was decided by the House that he was not thereby rendered ineligible; and he accordingly retained his seat.

Allen Trimble was returned a member of the Senate from the counties of Highland and Fayette, at the session of 1825-6, and at the time of his election he held the office of *Canal Fund Commissioner*. The Senate decided that it was not a *lucrative office*, and that Mr. Trimble was eligible, at the time of his election, to a seat in the General Assembly, by a vote of yeas 20, nays 14. (See Senate Journal of 1825-6, pp. 53, 54, 55.)

John A. McDowell was returned a member of the House of Representatives, from the county of Franklin, at the session of 1819-20, and at the time of his election he held the office of Prosecuting Attorney for said county, and it was proved that he had received \$75 for his services at one term of the court. The House decided that he was not ineligible, he also retained his seat. (See House Journal of 1819-20, pp. 34, 67, 68.)

Wright Warner was returned a member of the House of Representatives from the county of Coshocton, at the session of 1813-14, and at the time of his election he held the office of Prosecuting Attorney; the House held that he was eligible. (See Statute, 1st Chase, p. 705.)

Joel Yost was returned a member of the House of Representatives from the county of Monroe at the session of 1845-6, and at the time of his election he held the office of County Commissioner, the House decided that he was eligible. (See Statute, 2d Chase, p. 1472.)

The above named offices are not specified by name in the clause of the constitution referred to, nor are they, so far as the subscriber is aware of, spoken of in the constitution, but are created by statutory enactments, and so far as the same may be considered *offices* under the *authority of the State*, they are certainly on a grade with that of Notaries Public.

By the act of 1831, (see Swan's Statute, p. 400,) county commissioners are allowed two dollars per day, to be paid out of the county treasury. Prosecuting Attorneys were appointed by the Judges of the Court of Common Pleas of the several counties at the time Mr.

McDowell was elected to the House of Representatives, and received such compensation as might be allowed by the court. The same provision as to fees is still in force—the evidence showed that Mr. McDowel had received \$75 for his services at a single term of the Court.

Notaries Public are allowed by law the sum of fifty cents, and no more, for every protestation or other instrument of publication under the seal of his office, and fifty cents, and no more, for recording the same in a book. In order, therefore, to form some idea of the amount of business done by a Notary Public, it will be necessary to inquire what are the limits of his jurisdiction and the extent of his power. It will be seen by the law creating the office that each Notary Public is limited to the county in which he is located, and that the number which may be appointed in each county is unlimited, and the subscriber will venture the opinion that the records of the executive office will demonstrate that there are from three to five Notaries Public in most of the county seats in this state; their power is limited to protesting bills of exchange, notes, checks, &c., attesting instruments of writing, and taking depositions, &c., and judging from the amount of business of this kind which is to be done in a county seat of three thousand inhabitants, and the number of persons to do it, the emoluments of the office, during the entire term of three years, will frequently be insufficient to pay for the seal and press with which to attest the official acts of the incumbent. There is nothing in the law which forbids the commissioners of a county from holding their sittings during the entire year, if the business of the county demanded it; yet it would be presuming too much to suppose the existence of such a state of facts, yet such might be the case, in which event a commissioner would receive about \$650 per annum. Common sense and general observation teaches every man that in most of the counties of this State, a county commissioner's fees amounts to about from seventy five to one hundred dollars; and frequently falls below that sum. If every person who holds an office to which fees are attached, either as *per diem* or otherwise, is to be considered as holding a *lucrative* office, and consequently ineligible, the undersigned can see no good reason why supervisors of roads and township trustees are not *ineligible*—they hold office under the authority of the state and receive a specified *per diem* allowance for their services. The mere statement of such a proposition is sufficient to insure its rejection at once as absurd.

The subscriber fully concurs in the opinion expressed by the majority, that the resignation of an office, which renders its holder ineligible to be a candidate for, or hold a seat in the General Assembly, after election, will not restore the person to eligibility.

The undersigned would beg leave further to report that in his opinion many of the same causes which would tend to prove that the office of Notary Public is not a lucrative office within the meaning of the constitution, would apply with equal, if not greater, force to the office of Commissioner of insolvents; and without again referring to the

various facts in existence, which would tend to prove the proposition, he will content himself with the simple declaration that in his opinion it is not a lucrative office, and does not render the holder ineligible to be a candidate for, or hold a seat in the General Assembly.

All of which is respectfully submitted,

B. BURNS

MINORITY REPORT
OF THE
STANDING COMMITTEE ON PRIVILEGES AND ELEC-
TIONS, IN THE CASE OF HON. JOHN H. DUBBS.

The undersigned, a minority of the standing committee on Privileges and Elections, to whom was referred the certificate of election of Hon. John H. Dubbs, a member elect from the county of Hamilton; also, the abstract of votes given at the general election held *within and for* the county of Hamilton and State of Ohio, on the 10th day of October, A. D. 1848; being unable to agree with the majority of the committee in the course of reasoning pursued by them, now begs leave respectfully to submit the following report.

The certificate of election presented by Mr. Dubbs, at the clerk's desk, on the 4th day of December, 1848, and on which he was on that day admitted to a seat as one of the members of this Senate, is in the words and figures following, to wit:

"The State of Ohio, Hamilton Co., ss.

"It is hereby certified that at the general election held within and for the county and State aforesaid, on the tenth day of October, 1848, for State and county officers, John H. Dubbs had 6,539 votes for Senator to the State Legislature, for the said county of Hamilton, and State aforesaid; he having the highest number of votes given for that office at said election for that office, as appears by the abstract of votes on file in my office, and as appears by the poll books of said election, duly returned and opened at the office of the clerk of the court of common pleas of said county.

[L. S.] "In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 19th day of October, 1848.

(Signed,)

"E. C. ROLL,
"Clerk Court Common Pleas, Hamilton Co., Ohio."

The majority of the committee remark in the report which they have submitted, that "the extraordinary character of the said certificate renders it proper that the same should be brought to the special notice of the Senate."

The minority of your committee have carefully examined said certificate, and have been unable to discover any thing so very extraor-

dinary in its character. And for the purpose of enabling the Senate to judge of its character, the minority has so far followed the example of the majority as to spread it out upon record, so that it can be "known and read of all men." Before replying to the arguments of the majority, the minority of your committee deem it proper on this occasion to say that no notice of contest has been served on Mr. Dubbs, the sitting member, no constitutional inability or alledged ineligibility is charged against him ; no charge is preferred that he has not received a majority of the votes of the legally qualified electors of Hamilton county, or of any part of it, at the general election held in said county for State and county officers, on the tenth day of October, A. D. 1848.

The objection raised by the majority of the committee to the right of Mr. Dubbs to a seat is founded upon the form of his certificate of election, and its non-conformity to the provisions of the apportionment law (as they are pleased to term it,) of last session. The undersigned does not deem the present a proper occasion to speak of the *extraordinary* manner in which this so called apportionment law was placed upon the statute book, but will simply submit the suggestion that it will be found upon a careful examination to be equally as *extraordinary* as the character of the certificate now under consideration, and if the conduct of the clerk who issued the certificate is such as to call for the condemnation of the Senate, by thrusting it out, and characterizing it as a "*studied evasion of the law*," what must be thought of a Legislature which has violated the constitution in one of its most plain and obvious provisions, by dividing counties for representative purposes, by legislating upon subjects of vital importance to the people of the State, while one branch of the law making power is in a state of disorganization, and without the constitutional quorum which is imperatively demanded by the fundamental law of the State, and in utter disregard of the rules by which the rights of minorities are to be protected against the encroachments of unscrupulous majorities? The minority will venture the assertion that the case under consideration is fraught with more important considerations to the people of the State than any one of a like character which has ever risen since the foundation of our State government, now near half a century ago. It is impossible to conceal from the minds of this Senate, or the people of this great and mighty State, now the third in the Union, the causes which have given rise to the subject matter of report. I say it is impossible to conceal it, and therefore it will not be attempted.

The constitution of the State, Art. 1, Sec. 6, says : "The number of Senators shall, at the several periods of making the enumeration, &c., be *fixed* by the Legislature, and *apportioned among the several counties or districts* to be established by law, according to the number of white male inhabitants in each, &c." The 5th section of the same article says : "The Senators shall be chosen biennially, by the qualified voters for Representatives," &c. And the 3d section of the same article provides that, "the Representatives shall be chosen an-

nually, by the citizens of each county respectively, on the second Tuesday of October."

The same body of men who framed the constitution, in providing for the election of members of the first General Assembly which convened under it, declared that, "until the first enumeration shall be made, as directed in the several sections of the first article of this constitution, the county of Hamilton shall be entitled to four Senators and eight Representatives. The county of Ross, two Senators and four Representatives," &c.

In pursuance of this example set by the framers of the constitution, all subsequent Legislatures which have convened since that period, when called upon to fix and apportion the representation in the General Assembly, have regarded counties as indivisible for either senatorial or representative purposes. Eleven different bills have been passed into laws since the adoption of the constitution, in none of which is to be found a provision which divides counties, and it seems to have been reserved for the General Assembly of 1847-8 to first make the discovery that the constitution would warrant such a construction as is now sought to be put upon it. The second section of the first article of the constitution provides that, "within every term of four years an enumeration of all the white male inhabitants above twenty-one years of age shall be made in such manner as shall be directed by law." In compliance with this clause of the constitution, the General Assembly directed the manner of taking the enumeration and returning the same. The second section of the act referred to reads as follows: "That the clerk of the court of common pleas in the several counties, shall file in his office and carefully keep and preserve, the lists returned as aforesaid, and make out a statement of the *aggregate amount* of the white male inhabitants above the age of twenty-one years in his county, agreeably to the returns made to him as aforesaid, under his hand and the seal of the county, and transmit the same to the Speaker of the Senate, within ten days after the commencement of the next session of the General Assembly." This act so far as it relates to the duties of county assessors, was modified by the act of March 20, 1841, but no change whatever has been made touching the duties of the clerks of the several courts, but on the contrary, their duties are declared by the last mentioned act, to be the same in every particular as they were under the act of 1827. From the reading of the statute it will at once be apparent to the mind of all that no provision has been made for returning the enumeration of the several counties in any other way than by entire counties. The law itself expressly declares that the several clerks shall return the *aggregate amount*. This law was in force at the time of the alleged passage of the law referred to in the report submitted by the majority. The minority of your committee is at a loss to know by what means the number of white male inhabitants in any given number of townships or wards in any county could be legally ascertained by the General Assembly, since it must be admitted that no law is in existence directing such a mode of procedure.

This is admitted by the committee who reported the bill of last win-

ter, on page 60, Appendix to Senate journal, session of 1847-8. The committee say, "it would be necessary to send out to a great portion of the counties for returns by townships, and a law for that purpose might become necessary." If a law would be necessary in order to get returns by townships, the question may with great propriety be asked, how were the returns from the first 8 wards of the city of Cincinnati *legally* obtained?

The majority of your committee have said that "no officer or other person disposed and desiring to discharge in good faith the duties arising from the law recited, could mistake the fact that Hamilton county is divided into two senatorial districts, and that similar duties are required from clerks and others, in regard to each of those districts, as though they were formed of distinct counties." Lest this declaration might be supposed to be taken for true, by the minority, a comparison might with propriety be instituted between the law relative to districts composed of distinct counties and that part of the *bill* dividing Hamilton county.

The 27th section of the act to regulate elections, passed February 18, 1831, (Swan's Statute, p. 313,) reads as follows: "That when two or more counties compose a district, and elect in common, members of the General Assembly, one of the judges of each election district shall carry one of the poll books to the office of the clerk in that county in which the election was held, within the time prescribed by the twenty-first section of this act: (2 days,) and the clerk shall forthwith proceed to open the returns from the several election districts, in the same manner and under the same regulations that the clerks of the original counties are bound to do by this act, and make out a fair abstract of the votes given within the county, under the seal of the court of common pleas and attested by the clerk, and transmit the same by special messenger to the clerk's office of the county named for that purpose, of the counties which elect in common, within ten days after the day of election," &c.

The 7th section of the act above recited, provides, "that it shall be the duty of the sheriff and he is hereby authorized and required, fifteen days at least before the holding of any general election, or ten days before the holding of any special election, to give public notice by proclamation *throughout* his county of the time of holding such election, and the number of officers at that time to be chosen, one copy of *which* shall be set up at each of the places where the elections are appointed to be holden," &c.

The 23d section of the act of February 18, 1831, provides, "that on the *sixth* day after the election the clerk of the *county*, taking to his assistance two justices of the peace of the proper *county*, shall proceed to open the poll books," &c., &c.

The foregoing are all the statutory provisions which were in force at the time of the alledged passage of the act of Feb. 18, 1848, which have any bearing upon this subject.

So far as your committee have been able to ascertain, after a careful reading of the bill of last winter, the duties of the several officers above named are not changed in the least. Now suppose you substi-

tute the word *district* for the word *county*, in the acts recited, and see how they would read. The undersigned will not undertake the task. Each Senator can at once discern the absurdity of the position and the falseness of the premises, for how can the judges of election in the first district return the poll books to the clerk of the court in that district where no such officer as the clerk of the court of common pleas of the first district of Hamilton county exists? And how could a special messenger be dispatched with the abstract of votes in the *first district* to the clerk of the court of common pleas of the *second district* of Hamilton county, when no such office was in existence?

The law regulating the opening of poll books requires it to be done within six days, yet the section regulating the returns to be made by one county to another, where they elect in common, allows it to be done within *ten* days after the day of election. It may well be asked, what was the duty of the sheriff of Hamilton county under the provisions of the bill of 18th February, 1848? Was it his duty to issue his proclamation *throughout* the county? or, was it his duty to issue separate proclamations in the separate districts? As before remarked, there is not a single word of instructions or directions to the sheriff of Hamilton county in the bill. He therefore had to look to the act of 1831, for the purpose of ascertaining his duty, in which act it is made his duty, "fifteen days before the election to issue his proclamation *throughout* the county;" not to a part of the county; not to notify the electors of the number of officers to be elected in a part of the county, but in the whole of the county his proclamation was to be posted up, not in a *part* of the county, but *throughout* the county. He was not authorized nor required to issue one kind of a proclamation to one part of the county, and a different one to another part of the county, but the same proclamation which was required to be set up in the first ward of the city of Cincinnati, was required to be set up in the several election districts throughout the entire county of Hamilton, and the proclamation thus set up by the sheriff of Hamilton county, in pursuance of the law of 1831, called upon the people of each and every election district in the county to meet on the 10th day of October, 1848, at their usual places of holding election, and then and there proceed to elect by ballot, among other officers, "*one Senator and five Representatives*," not to represent any particular portion of the county, but the entire county. The electors were not notified to elect A. B. and C. D. to represent one part of the county, and E. F. to represent another and different part of the county, but they were notified to meet and elect the whole number apportioned to the whole county, who should, when elected, represent the entire county. This view of the case is much strengthened by reference to the report of the majority of the joint select committee on the apportionment, who reported the bill of last session. The report is to be found commencing at page 51 of the Appendix to Senate journal of 1847-8. The passage to which I refer may be found on page 58 of the Appendix. It reads thus: "Hamilton county, however, will still have five Representatives in the General Assembly." Again, on the same page, the report says, "these five allotted to Hamilton county are represen-

tatives of the county and not merely the particular district by which they are elected. Any citizen of the United States and inhabitant of this State, of the age of twenty-one years, and who shall have resided one year within the limits of this *county*, may be voted for and elected by the qualified electors of either district." This, it seems to your committee, is strange doctrine to be asserted in a republican form of government; that the *whole* people who are legally qualified electors shall not be allowed to vote for the person who is to be their especial and immediate representative, and who, when elected, shall be authorized to represent their views and interests, and yet debar the elector the right to vote for or against the person thus representing them. As well might it be argued that the Representatives from the States of Louisiana and Texas had a right to represent the people of Ohio and Indiana in Congress, and your committee is of the opinion that instructions coming from the people of Ohio would be quite as legitimate when directed to the representatives from Texas, as would instructions from any portion of community when directed to a representative in whose election they had no voice. The proposition, however, is so absurd that the undersigned will not trouble the Senate with any further remarks upon that point in the case.

But it may be asked, what is the object of the sheriff in issuing his proclamation? So far as the subscriber is able to judge from the reading of the statute, the object may be divided in three parts. To notify the electors of the time of holding the election; the class of officers to be elected; and the number of each. This duty was performed by the sheriff. The electors of Hamilton county met, in pursuance of the proclamation, in the several districts in the county, on the day appointed, and elected the number of Senators and Representatives to which the county was entitled. So far then as the sheriff and the people of Hamilton county are concerned they have not only complied with the constitution, but with the law regulating elections. It may and doubtless will be urged that the constitutional provision relative to the apportionment of Senators is different from that of Representatives, and that although it may be questionable whether a county can be divided for representative purposes, yet it is clear that a county can be divided for senatorial purposes.

Your committee will venture the opinion that after a careful and candid examination of the constitution upon that subject, no man, however violent may be his party prejudices, will venture to advocate the doctrine of dividing counties for senatorial purposes.

The sixth section of the first article of the constitution of the State of Ohio, (heretofore quoted,) provides as follows:

"The number of Senators shall, at the several periods of making the enumeration before mentioned, be fixed by the Legislature and apportioned among the several *counties or districts* to be established by law, according to the number of white male inhabitants of the age of twenty-one years in each."

The seventh section of the same article says: "No person shall be a Senator who has not arrived at the age of thirty years, and is a citi-

zen of the United States; shall have resided two years in the county or district immediately preceding the election."

The fifth section of article first provides that "the Senators shall be chosen biennially by the qualified voters for representatives."

These, so far as the undersigned has been able to discover, are the only constitutional provisions bearing directly upon this question.

What the framers of the constitution intended by the peculiar wording of these sections, your committee cannot of course be supposed to arrive at with mathematical accuracy. In this, as in all other things not entirely and beyond peradventure clear and indisputable, the language must be tested, to some extent at least, by the rules of common sense; but perhaps the best and most unanswerable argument in favor of the particular interpretation of any language of a dubious or doubtful meaning, is by a comparison of the subject matter under consideration with the subsequent action of the men who framed the sentence or language sought to be interpreted.

The framers of the constitution, before adjourning, and as a part of their labors, "fixed and apportioned" the number of senators and representatives among the several counties, giving to the county of Hamilton four senators, &c. Now had they intended to be understood as having favored the construction sought to be put upon the instrument then fresh from their hands, is it not reasonable to suppose they would have given some evidence of it by dividing some one, at least, of the then few and very large counties into which the State was divided? On the contrary, they gave to this same county of Hamilton four senators.

It is contended by some, that the power to divide counties for senatorial purposes is *clear and unquestionable*, because, forsooth, the language of the constitution is different from that which refers to representation. It has been the practice, say they, in former times, to place two or more counties in one senatorial district. If this can be done, why not separate or *divide* a county for the same purpose? This, to the mind of the subscriber, is false logic. The truth of a proposition having been admitted, it does not of course carry with it the truth of the *converse* of that proposition. Your committee is therefore of the opinion that the wording of the constitution was so arranged for the express purpose of enabling the Legislature to unite two or more counties for senatorial purposes, inasmuch as they had apportioned the representatives "among the several counties;" and as the number of senators could never be more than half the number of representatives, it was evident that, where two counties lying contiguous to each other, and each entitled to a representative, the two counties united should form a senatorial district.

If a county can be divided for senatorial purposes, then with equal propriety could a senatorial district be formed without any reference whatever to county lines. A district might be so arranged as to include portions of four, or even in some instances five different counties. Such a construction as this will not surely be urged by any person; and yet it is equally as tenable as the one sought to be maintained in order to justify and sustain the bill of last winter.

Suppose A B to have resided in the first ward of the city of Cincinnati, for two years immediately preceding the election for senator, on the second Tuesday of October, 1848, *query*, would he have been constitutionally eligible to hold a seat as senator for the 2d district of Hamilton county? If so, where is the constitutional authority found? He has *never* resided in the second district. The constitution requires him to have resided two years in the district; but, say the majority, if not in so many words, at least in substance, he has resided two years in the county, and that is sufficient. In what county has he resided? So far as the election of a senator is concerned, if the bill of last session be correct, the 1st and 2d districts of Hamilton county are as much separated as the counties of Hamilton and Butler are. The obvious and plain meaning of the constitution is, that where a senatorial district is composed of a single county, as in the case of Butler, Licking, Muskingum, and Stark counties, the candidate must reside in the county; and where the district is composed of two or more counties, the candidate must have resided within the district during the time required by the constitution. This, to the subscriber, is the only proper construction which can be put on that clause of the constitution, and the one obviously intended by its framers.

But to return to the certificate presented by Mr. Dubbs, and ascertain, if possible, in what the offence of this clerk consists, whose official conduct has been the subject of such severe animadversion by the majority of the committee; so far as the minority have been able to discover, the "head and front of his offending" consists in two things: First—he as well as the sheriff and the people of Hamilton county, have seen fit to repudiate the apportionment scheme of last winter, and elect members to the Legislature without regard to the division of the county; and secondly, the certificate is not, as alledged by the majority, in conformity with the particular plan laid down by them. It does not contain what they are pleased to call the *three essential points*, namely, the person elected, the office to which he is elected, and the district which elected him.

The undersigned is not prepared to say that a certificate would not be good did it contain less than is here required; but if it be necessary that it should be definite in these points, then the one under consideration is in every particular complete, for it does most emphatically contain these essential particulars. It certifies that John H. Dubbs was elected, that he was elected to the office of senator in the General Assembly, and that at an election held in the county of Hamilton, on the 10th day of October, 1848, said Dubbs was duly and legally elected, &c. Now is this not true? Let the record speak for itself.

By reference to a document referred to the standing committee on Privileges and Elections, entitled "an abstract of the votes given at the general election held *within and for the county of Hamilton*, in the State of Ohio, on the 10th day of October, A. D., 1848;" (not at an election held in the first district or in the second district of Hamilton county, but "within and for the county of Hamilton,") I find that John H. Dubbs had 6,539 votes, and John Burgoyne 3,159 votes for senator. Appended to and forming a part of this abstract is the cer.

tificate of the two justices of the peace and the clerk of the court of common pleas of Hamilton county, who abstracted the votes given at said election; and inasmuch as this certificate has a direct bearing upon the question now under consideration, the undersigned has thought proper to copy that part which relates to the election of Mr. Dubbs, into this report, which reads as follows:

“ The State of Ohio, Hamilton county, ss.

“ We, the undersigned, do hereby certify the foregoing to be a correct abstract of the votes given at the general election held *within and for the county and State aforesaid*, on the 10th day of October, A. D., 1848, for State and county officers, as taken from the poll books of said election, this day opened and examined by us in pursuance of the statute in such cases made and provided. * * * * *

And that John H. Dubbs had 6,539 votes for senator to the State Legislature, and John Burgoyne had 3,159 votes for senator to the State Legislature; and we do declare that John H. Dubbs is duly elected senator in the State Legislature *for the county of Hamilton and State aforesaid.*”

Said certificate is signed by E. V. Brooks and Mark P. Taylor, the two justices of the peace, and is also concurred in by Edward C. Roll, the clerk. These gentlemen, under the statute of 1831, and which is still in force, are made the canvassing committee, or officers whose duty it is to open the poll books of the several townships, &c., and ascertain the number of votes given for each candidate, and *declare the person having the highest number of votes for Senator, &c., duly elected.*

This, as will be seen by the certificate of the justices and clerk just read, was all done in strict conformity with the provisions of the statute, and John H. Dubbs was found to have the highest number of votes for Senator, and was accordingly declared *duly elected*, not for the first district or for the second district, but for the county of Hamilton, which had elected him.

The further duty of the clerk was plain and simple. The same statute of 1831 directs the clerk to “ make out for each senator to the General Assembly, &c., who have the highest number of votes given, a certificate of his election, and shall deliver the same to the person entitled thereto, upon demand, without fee.” The statute itself does not point out any specific form in which the certificate shall be made out, whether it shall be on one sheet or two sheets, or whether it shall contain fifty or one hundred words. The particular form of the certificate is left entirely to the clerk who issues it, and they are generally long or short, as the judgment and taste of the clerk may dictate.

The certificate of Mr. Dubbs was made out in pursuance of the declaration of the canvassers, in pursuance of the votes of the people of Hamilton county, in pursuance of the law under which they acted, the certificate was given to Mr. Dubbs, as the person having the highest number of votes, and as being entitled thereto; and so far as the

minority can judge, it is in strict conformity with the law on the subject, and in every particular meets the requirements of the majority of the committee, and consequently clearly entitles the holder, Mr. John H. Dubbs, to a seat on this floor as one of the senators for the county of Hamilton, in the State of Ohio.

The minority deem it proper here to submit a few words in reply to the arguments of the majority of the committee on the custom heretofore prevailing in this State, of reading the credentials of members when first presented, and before being sworn into office.

The majority appear to think it a most excellent practice, and admirably calculated to detect spurious certificates, or those fraudulently or surreptitiously obtained, and ought never to have been abandoned. The minority is of the opinion their reasoning may be good in theory, but bad in practice. In order to test its practicability, let a supposed case be put. On the first Monday of December, the members of the Senate elect, together with those holding over, meet in the Senate chamber for the purpose of organizing, and from death, removal, or *resignation*, (as was the case in 1842,) there are only ten or twelve sworn members of the Senate present; one of their number calls to order and directs the persons holding certificates of election, to come forward and present them and be sworn; the first man who presents his certificate is objected to on account of some alledged informality in his certificate; who is to decide the question? Can the member to whom it is presented decide? Can the ten or twelve members holding over decide? or must the person presenting the certificate stand aside? An answer to these questions will at once show the fallacy of the doctrine laid down by the majority.

The constitution, Art. I. Sec. 8, makes each house the "*Judges of the qualifications and elections of its own members*," and also requires a "quorum of two-thirds of the members to do business." If each house and no other tribunal shall be the judges of the qualifications and elections of its own members, and it requires two-thirds to exercise this power, it may with propriety be asked, by what authority one man, or ten men, can exercise this high constitutional prerogative? The proposition is in itself so absurd and ridiculous, that it is deemed by the minority a more than idle waste of time and paper to reply further to it.

In conclusion, the subscriber begs leave to say, that so far as the report of the majority goes to *intimate* that Mr. Dubbs has been admitted to a seat in this Senate, at the organization of the General Assembly, "without even the shadow of truth and justice to support his claim," it is entirely gratuitous and unwarranted by the record, and ought not to have been made; but, on the contrary, Mr. Dubbs, in the opinion of the minority, presented the proper evidence of his election, that he was properly admitted to the seat which he now occupies as one of the Senators, duly and constitutionally elected to represent the county of Hamilton in the General Assembly of the State of Ohio.

All of which is respectfully submitted.

B. BURNS.

APPENDIX.

Cases of Parliamentary Law, and of Privilege and Election, contested and determined in the General Assembly of the State of Ohio, with notes on cases determined in the Congress of the United States, compiled by the committee for ready reference, and made part of the Report of the Standing Committee on Privileges and Elections.

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CONTESTED ELECTIONS IN CONGRESS.

Non-compliance with the provisions of the Statute in conducting Elections.

I. VITIATES THE ELECTION.

First case—JACKSON *v.* WAYNE, Ga. 1791.

The statute requires that *three magistrates* should preside at elections. Where an election was held and returned by three *persons*, two of whom were *not* magistrates, the election was declared *void*.

In one election district the polls had been closed at sunset, the usual time, and the votes counted. *Afterwards*, the officer who had conducted the election, opened the polls again and received additional votes.

These were set aside. *Clarke's Contested Elections*, 47.

2. LATTIMER *v.* PATTON, Del. 1793. *Votes rejected*.

Delaware was entitled to one representative in Congress. The statute provided that "each voter shall deliver in writing, on one ballot, the names of *two* persons, one of whom, at least, shall not be an inhabitant of the same county with the voter."

In Sussex county, 68 votes were given for Patton *alone*, and 9 for Lattimer *alone*. In Newcastle county, 4 tickets were polled for two persons residing in that county. *All these votes were rejected.* *Con. El.* 69.

3. MCFARLAND *v.* PURVIANCE, N. C., 1804. *Election set aside*.

The neglect or refusal of the inspectors or clerks of elections to comply with the election laws of the State, as to taking the oaths prescribed, &c., vitiates the election. *Con. El.* 131.

4. *McFARLAND v. CULPEPPER*, N. C., 1807. *Election set aside.*

The same point decided as in the last case. *Con. El.* 221.

5. *EASTON v. SCOTT*, Mo. 1816. *Election set aside.*

The election was required by the statute to be held by *three judges*, who were to be *sworn*. It was held by *two* who were *not* sworn. *All the votes taken were rejected.* *Con. El.* 272.

6. *DRAPER v. JOHNSON*, Va. 1832. *Election set aside.*

The neglect of the sheriff, or other officer conducting the election, to take the oath required by law, vitiates the proceedings in the particular precinct or county, and the whole votes for such precinct or county are to be rejected. Also, if the sheriff assumes to act in the capacity of clerk as well as inspector, the law requiring clerks to be appointed. *Con. El.* 712.

II. DOES NOT VITIATE THE ELECTION.

1. *TALIAFERRO v. HUNGERFORD*, Va. 1813. *Election held good.*

The statute required that the *names* of the voters should be set down in *separate columns*, under the names of the persons voted for. In this case they were all set down in the same column with straight marks drawn to figures, under the names of the candidates, so as to indicate for whom they were given. The committee reported against the validity of the election for this disregard of the statute. The House, however, disagreed with them, and *affirmed* the right of the sitting member. *Con. El.* 250.

2. *PORTERFIELD v. MCCOY*, Va., 1815. *Election held good.*

In this case, the directions of the statute with regard to the manner of writing down the names of voters in separate columns, were disregarded in the same way. The clerks, who were required by the statute to be sworn before entering upon their duties, were not so sworn; but after the polls were closed, and they had made out their returns, they were sworn as to their correctness. Still the election was held good. *Con. El.* 267.

3. *ARNOLD v. LEA*, Tenn., 1830. *Election held good.*

The statute provides that the inspectors and clerks of elections shall be sworn. Three inspectors were appointed in this case, and one of them being a justice, he swore himself and the others. This was held sufficient. *Con. El.* 601.

*Non-compliance with provisions of the Statute by Returning Officers.***I. DOES NOT VITIATE THE ELECTION, AND HOUSE MAY CORRECT RETURNS AND COUNT ALL VOTES LEGALLY GIVEN.****1. JOHN RICHARDS, Pa., 1796.**

Votes which had been properly given, but which had not been returned by the county judges to the district judges within the time required by the statute, were rejected by the returning officer; but, upon contest, the House counted them. *Con. El.* 95.

2. DAVID BARD, Pa., 1796.

Votes rejected by the returning officer, because not returned within the time limited by the statute, counted by the House. *Con. El.* 116.

3. SPALDING v. MEAD, Ga., 1805.

Votes not counted by the governor, because not returned within the time required by statute, were allowed by the House. *Con. El.* 157.

4. WILLIAMS v. BOWERS, N. Y., 1813.

In this case the addition, *junior*, was on the tickets. The returning officer had omitted it in his return. The House corrected the returns so as to correspond with the tickets. *Con. El.* 263.

5. WILLOUGHBY v. SMITH, N. Y., 1815.

Same decision. *Con. El.* 265.

6. ROOT v. ADAMS, N. Y., 1815.

Same decision. *Con. El.* 271.

8. GUYON v. SAGE, N. Y., 1819.

Same decision. *Con. El.* 348.

9. ADAMS v. WILLSON, N. Y., 1823.

Same decision. *Con. El.* 373.

10. MALLORY v. MERRILL, Vt., 1819.

Votes which had been rejected by the returning officer because they were not returned in conformity with the statute, were counted by the House. *Con. El.* 328.

11. COLDEN v. SHARP, N. Y., 1821.

Same decision. *Con. El.* 369.

12. HUGUNIN *v.* TEN EYCK, N. Y., 1825.

Mistake of returning officer as to the name of the candidate voted for, corrected by the House. *Con. El.* 501.

13. BIDDLE *v.* RICHARD and WING, Mich., 1826.

Certifying officers are ministerial officers, and their mistakes should be rectified by the House. *Con. El.* 504.

14. WRIGHT *v.* FISHER, N. Y., 1829.

Same decision. *Con. El.* 518.

15. DRAPER *v.* JOHNSON, Va., 1832.

Neglect to return the votes to the clerk's office within the required time, after the canvass, the provisions of the law being merely *directory*, will not vitiate the election, it appearing that the polls were afterwards returned and filed. *Con. El.* 712.

Votes intended for a Candidate are to be counted to him.

1. TURNER *v.* BAYLIES, Mass., 1809.

In this case, the candidate wrote his name with the addition of *junior*, his father still living, though not in the same district. On proof that letters frequently came to him without this addition; that he was known as well by his name without the addition as with it, and that there was no other candidate of that name who run, and probably no other man of that name in the district. Votes that had been cast having the name without the *junior* were allowed him. *Con. El.* 235.

Defective Certificate objected to by opposing Candidate. Neither party allowed to be sworn until after investigation.

1. LETCHER *v.* MOORE, Ky., 1833.

The district was composed of *five* counties. The law required that all the sheriffs should meet, canvass the votes, and give a certificate to the person elected. The votes of one county were not included in the canvass which was had on this occasion, and but three sheriffs made the canvass and certified the election of Moore. Both candidates appeared at the organization. When Moore's name was called, objection was made to the sufficiency of his certificate, and the right of Letcher presented. Both were ordered to withdraw until after an organization of the House, and an investigation of their respective claims. *Con. El.* 715.

2. U. S. Senate. JAMES LANMAN. Conn. 1825.

At the extra session of the Senate, March 5, 1825, Lanman, whose term had expired the day before, presented a certificate of his appointment by the Governor, dated in Feb. 1825. Objection was made that when the appointment was made there was *no vacancy*. He was not permitted to take his seat in the first instance, and was finally declared not entitled to his seat at all. *Con. El.* 871.

[CONTRA.]

1. U. S. Senate. URIAH TRACY. Conn. 1801.

At the extra session, March 4, 1801, Tracy presented his credentials of appointment by the Governor, which were objected to for the same reason as in the last case. He was, however, permitted to take his seat until the matter should be investigated. *Con. El.* 871.

2. U. S. Senate. POTTER *v.* ROBBINS, R. I., 1833.

At the meeting of the Senate, Dec., 1833, Robbins appeared and presented his certificate of his election, in January, 1833. Potter appeared also and presented a certificate, stating that the election aforesaid, of Robbins, was void, and that he had been elected in October, 1833. On motion, Mr. Robbins was admitted to his seat temporarily, and was afterwards confirmed in it. *Con. El.* 877.

VACANCY BY RESIGNATION.

A member elect may resign his seat, and the Governor need not wait for the seat to be declared vacant by the House before calling a special election.

1. JOHN F. MERCER, Md., 1791.

Wm. Pinckney was elected Oct. 1, 1790, a member of the 2d Congress, the term commencing in legal contemplation March 4, 1791. No session was held until Nov. 1791. Sept. 26, 1791, Pinckney, by letter directed to the Governor, resigned, and a *special* election being called by the Governor, Mercer was chosen to fill the vacancy. The resignation and election was declared valid by the House. *Con. El.* 44.

2. JOHN SERGEANT, Pa., 1827.

John Sergeant and Henry Horn were the opposing candidates at the election of October, 1826, for the 19th Congress. By the returns made to the Governor, it appeared that they had received an equal number of votes. After receiving a statement in writing from both of them, that they relinquished all claim to the seat in consequence of the election of 1826. He then called a special election, to be held at

the annual election in 1827, when Sergeant was elected. After he had taken his seat, his right was contested on the ground that it had been discovered that Horn had the most votes at the election in 1826. The House held that Horn was concluded by his *resignation*. *Con. El.* 516.

3. JOHN HOGE, Pa., 1804.

Wm. Hoge resigned his seat by letter, directed to the Governor, dated Oct. 15, 1804. The Governor called a special election to fill the vacancy, at the presidential election in Nov. 1804. John Hoge was elected. The House held that the election was properly called. *Con. El.* 135.

4. BENJAMIN EDWARDS, Md., 1795.

A similar decision made in this case. *Con. El.* 92.

DISQUALIFICATION FOR OFFICE.

1. JOHN P. VAN NESS, N. Y., 1803. (Question arose on motion of member without petition.)

John P. Van Ness had been elected a member of Congress for two years, from March 4, 1801. During the recess, after the first session, he received from the President the office of *Major* in the militia of the District of Columbia. Held, that this *vacated* his seat as a member of Congress. *Con. El.* 122.

2. JOHN BAILEY, Mass., 1824.

Bailey had resided for some years previous to his election at Washington, where he acted as a clerk in one of the departments. When he left home, he intended that his stay in Washington would not be permanent, and always regarded his residence there as temporary, and never assumed to exercise any of the rights of citizenship while there. He had, however, married a wife there, and made it his home in the family of her father. Held, that he was not an *inhabitant* of the congressional district at the time of his election, and was therefore *ineligible*. *Con. El.* 411.

N. B.—There was no pretence in this case that his opponent was elected.

Holding an Office at the time of election, and after the commencement of the Congressional Term, does not disqualify if resigned before an actual session.

1. HAMMOND v. HERRICK, Ohio, 1817.

At the annual election, in 1816, Herrick was elected to Congress, his term *nominally* commencing March 4, 1817. There was in fact no session until December, 1817. On the 29th of November, 1817, he *resigned* the office of *District Attorney* for the District of Ohio, which office he had held for several years. Held, that the holding of this office did not disqualify him either as a candidate or otherwise. *Con. El.* 287.

2. ELIAS EARLE, S. C., 1818.

Same point decided as in the last case. *Con. El.* 314.

3. GEORGE MUMFORD, N. C., 1818.

The formal resignation of an office held by a member elect, is not necessary if the duties of it have so far ceased as to have operated as a virtual abolition of the office. *Con. El.* 316.

OHIO.

CONTESTED ELECTIONS IN THE HOUSE OF REPRESENTATIVES.

Non-compliance with the Statute in conducting Elections.

I. VITIATES THE ELECTION.

1. DAVID C. BRYAN, 1806-7. *Clermont*. Contested by *Thos. Morris*.

The committee on Elections report: "We do further find, from an inspection of the poll-book of the election held in that (Miami) township, that it is informal, deficient in substance, and in every respect variant from the method prescribed by the statute laws of this State, and are of the opinion that it ought not to have been received by the clerk and justices of Clermont county," &c. With this the House agreed, set aside the votes given in that township, and declared Morris entitled to his seat. *H. Journal*, p. 15, 19.

2. JOHN JONES *v.* JOHN C. SYMMES, 1807-8. *Hamilton.*

Symmes was returned elected. Jones contested his seat. The board of canvassers rejected the votes of one township. The committee on Elections sanction this and say: "We find it (the return) informal, deficient in substance, and in every respect variant from the mode or manner prescribed by law."

They also reject the poll-book of Sycamore township. 1. "Because, from an inspection of a copy of the poll-book, in counting the tallies, it appears John C. Symmes had only one hundred votes, while in fact it is certified in writing, at the foot of the poll-book, by the judges and clerks of the election, that he had one hundred and ten, a variance of ten votes." 2. "That the poll-book from the township was inclosed in a blank piece of paper, and sent to the clerk of the court of said county, without any direction whatever, and in that manner delivered to him. For these reasons, we are of opinion that the return from that township ought to be rejected."

This gave Jones a majority. The House concurred, and Jones was admitted to his seat. Journal, 15, 16, 20.

II. DOES NOT VITIATE.

1. — *v.* BENJAMIN HINTON, 1820-21. *Fayette.*

Election contested on the ground that the polls in one township were closed before four o'clock. The committee think the testimony establishes the fact, but it did not appear that it was done from any partial or improper motive. And as there was no proof that the contestor was injured by it, they thought it not sufficient ground for setting aside the poll. The House concurred. Journal, 9, 10, 11.

2. — *v.* DAVID MITCHELL, 1820-21. *Scioto, Pike, and Lawrence.*

Seat contested on the ground that the returns from the counties of Pike and Lawrence were opened by the clerk of Scioto county, without the assistance of judges or justices, as the law directs. That the clerk and justices of Scioto improperly rejected the poll of one township because it bore the wrong date; and that the poll of one township was *received* improperly, the same having been closed, and some 20 votes canvassed before four o'clock, and before the judges ceased receiving votes.

The committee say the first ground is not *absolutely* proven, but if it were they would not reject votes fairly given on account of the fault of the clerk. They are with the contestor on the *second* part. On the *third* there is a difference of opinion. The House decide, by a vote of 44 to 22, that *thus canvassing* the votes did *not* vitiate the poll, and Mitchell was therefore declared entitled to the seat. Jour. 48, 49, 50, 70, 71.

3. JOHN L. MEREDITH *v.* AARON L. HUNT, 1821-2. *Champaign.*

Seat contested because the poll-book of Harrison township was rejected. This was done because it did not appear from the poll-book that the votes given for the contestor were given for him as representative. Nor does it appear that the judges and clerks were sworn. The *depositions*, however, show that the votes were given for the contestor as *representative*. There was *no* testimony to show that the judges and clerks were sworn. If these votes are counted the contestor is elected.

But the *sitting member* claims that the votes of Jackson township should be rejected, because one of the *clerks* was a *candidate* for the officer of commissioner at the election. If these votes should be rejected, the sitting member would still be entitled to his seat.

The committee were in doubt, but the House decided, 43 to 22, that Meredith was entitled to his seat. Jour. 37, 38, 62, 63.

4. ROBERT H. CULBERTSON *v.* WM. FIELDING, 1827-8. *Miami, &c.*

The testimony showed that three votes were given to *Robert Culbertson* and one to *Robert W. Culbertson*. It was shown, by testimony of a general nature, that these votes were intended for Robert H. Culbertson; that is, it was shown that there was no other person of the name of Culbertson a candidate for office within the district. The committee were inclined to count these votes. This would create a *tie*. It was, however, shown that three illegal votes had been given for Culbertson. Fielding was therefore entitled to his seat, unless one of the poll-books should be rejected, as the contestor claimed it should be, on the ground that the clerks were *appointed by the trustees* of the township, instead of being *elected by the voters present*. This is proved; but it is also proved that it was assented to by the voters, they supposing it right. The committee are against its rejection. The House concur. Jour. 24, 25, 26.

5. JOSEPH BURGAN *v.* ED. AVERY, 1824-5. *Wayne.*

SENATE.

Seat contested on the ground of *illegality* in conducting the election.

The Senate find that, some time between twelve and two o'clock, the judges counted out the votes that had already been polled, though they did not close the polls until the proper time. There was no proof of fraud, nor that a different result was produced from what would otherwise have taken place. The Senate *censure* the act, but do not reject the poll-book, and declare *Avery* entitled to his seat, notwithstanding the irregularity. Senate Jour. 45, 46, 47.

Non-compliance with the Statute by Returning Officers.

I. VITIATES THE RETURNS.

HOUSE.

1. MASSIE *v.* RETURN JONATHAN MEIGS, Jr., 1807-8. *Gubernatorial Election.*

The votes of Trumbull and Geauga counties were returned by the clerk of Trumbull county *jointly*; those of Greene were returned only by the clerk of Champaign; and those of Athens only by the clerk of Washington county. These were *rejected*, because the law required them to be returned *separately* by the clerk of the proper county. The *rejection*, however, did not vary the result.

The votes of Champaign, Ross, Belmont, Highland, and Washington counties, were also rejected, because "it did not appear that the abstracts had been made by the clerks of the several counties, *with the assistance of such authority as is by law required.*"

They also reject the votes of Adams county, "it not being certified under the seal of the county."

None of these rejections changed the result. *See H. Jour.*

SENATE.

2. SARDINE STONE *v.* LEVI BARBER, 1819-20. *Washington and Athens.*

Stone contested Barber's election on the ground that the votes of *seven townships* had been improperly rejected by the *board of canvassers*. The Senate held that the votes of *six* of these townships were improperly rejected, and gave Stone his seat. The votes of *one* township they declared properly rejected, for the reason that they were not delivered to the clerk by one of the judges of the election, but by a third person. *Senate Jour.* 5, 6, 19.

II. DOES NOT VITiate THE RETURNS.

HOUSE.

1. — *v.* ALEX. ENOS, 1815-16. *Knox and Richland.*

Election contested on the ground that "the abstract of votes given in Richland county was incorporated with the votes given in Knox county by the clerk of Knox county, of his own mere motion, without calling to his assistance two associate judges, or justices, or one of each, as the law directs."

The committee, on this account, reported that he was not entitled to his seat. The House *disagreed* without division. *Jour.* 42-3.

2. GEO. KESLING *v.* DAVID SUTTON, 1819-20. *Warren.*

The committee report "that the judges of the election, in Clear-creek township, returned, by mistake, that *George Harlan* instead of *George Kesling*, as the fact was, had one hundred and eight votes." These were rejected by the board of canvassers. If counted to Kesling, he has a majority. The committee think they should be so counted. The House concur, without division, and Kesling is admitted to the seat. Jour. 8.

3. FARWELL *v.* DAVID ABBOTT, 1821-2. *Huron and Sandusky.*

Abbott's right to the seat depended on the propriety of the rejection by the board of canvassers of the poll-book of *Seneca township*. The following were the principal defects in the poll-book :

First: "From the face of the return, it does not appear that the judges or clerks were sworn."

Second: "The names of the electors are not mentioned therein."

Third: "The return is not dated, nor is there any time or place mentioned therein when or where the election was held, nor does it purport to be the return or poll-book of any election whatever."

From *depositions*, it appeared that the election was *fairly* and *impartially* held in said township of *Seneca*; that the judges and clerks were properly sworn, and the number of votes returned was duly received. The House decided that the poll-book should be *received* and counted, 44 to 21. *Farwell* was thereupon admitted to the seat. Jour. 36, 37, 63.

4. JAMES RILEY *v.* ALEX. SMITH, 1823-4. *Darke and Shelby.*

The poll-book of St. Mary's township had been rejected by the board of canvassers. If this was properly done, after making certain other corrections which the committee recommended, *Smith*, the returned member, was entitled to his seat.

The objection to the poll-book was, "that there was no date to said return, nor poll-book accompanying the same."

The testimony, however, in the case, showed that the election had been properly held there; that the judges and clerks were duly sworn; that Riley received thirteen votes there and the sitting member none.

The committee reported in favor of Riley and the reception of the poll-book. The House agreed to the report without division. Jour. 12, 13.

5. CASE OF MEMBERS FROM FAIRFIELD, 1824-5.

The committee on Privileges and Elections report, that the clerk of Fairfield county certifies that the election was held in that county on the thirteenth instead of the twelfth of October, which was the proper day for holding the election. This, they say, they are satisfied, from parol testimony, is a mistake of the clerk. The members continued to hold their seats. Jour. 30.

6. GREGORY POWERS, Jr. *v.* WM. COOLMAN, Jr., 1832-3. *Portage.*

A part of the votes given for Gregory Powers, jr., were returned as given to Gregory Powers. This gave *Coolman* the majority, and he got the *certificate*. The committee correct the returns so as to correspond with the facts, and declare *Powers* entitled to the seat. The House concur. Jour. 6, 7.

SENATE.

7. NEWCOM *v.* BLODGET, 1821-2. *Montgomery.*

Blodget's seat contested by an elector, on the ground that the poll-book of *Jefferson* township, which *had been received* by the board of canvassers, was not signed by the judges, and attested by the clerk, as the law directs.

The difficulty was, that the judges and clerks did not certify the *number of electors*. They did, however, certify the *number of votes* given for each candidate and for what office.

The Senate held that the poll-book was *properly received*, and that *Blodget* was entitled to his seat. Had the poll-book been rejected, one George Newcom would have had a majority of the votes. Jour. 5, 35.

8. LARWILL *v.* AVERY, 1826-7. *Wayne and Holmes.*

Wm. McFall, an elector, contested Avery's right to his seat on the ground that Joseph H. Larwill had received the highest number of votes.

The returns showed that *Joseph Larwill* received sixty-one votes, *Joseph H. Larwill* 1389 votes, and Edward Avery 1428. All the votes returned as cast for Joseph Larwill, except twelve, were in fact cast for Joseph H. Larwill. Counting these 39 votes to Larwill, he would have a majority of 8 votes. The committee not only make this correction, but declare that in their opinion the twelve votes were also intended for him, making his majority 20. *The Senate concur.* Jour. 5, 6.

Votes intended for a Candidate are to be counted to him notwithstanding a variance in the name.

HOUSE.

1. MASSIE *v.* MEIGS, 1807-8. *Gubernatorial Election.*

There were given the following votes for Governor, viz :

For Nathaniel Massie	4438
Return Jonathan Meigs, Jr.	1751
Return Jonathan Meigs	122
Return J. Meigs	3374
R. J. Meigs	680

The joint committee of the two houses reported, "that they are of opinion that all the votes given for Meigs, by these different appellations, were intended for Return Jonathan Meigs," and they were accordingly allowed to him. *Journal*.

2. CRULL *v.* BONSER, 1827-8. *Scioto, Pike, and Lawrence*.

In this election, fourteen votes were proved to have been given for *William Crull*, which were intended, as shown by the depositions of the voters themselves, for *Samuel Crull*.

If these votes should be counted to him, Crull would be elected; if not, Bonser, who received the certificate, was entitled to his seat. It appeared to the satisfaction of the committee, that there was no other candidate within the district by the name of Crull except Samuel Crull.

The committee reported in favor of *Samuel Crull*. The House concurred, and he was admitted to the seat. Jour. 8, 9, 10, 32.

2. CULBERTSON *v.* FIELDING, 1827-8. *Miami*.

Votes given to *Robert Culbertson*, and to *Robert W. Culbertson*, counted to *Robert H. Culbertson*, it being proved that no one by the name of Culbertson, except Robert H., was a candidate within the district. (See ante p. 121.) Jour. 24, 25, 26.

SENATE.

4. LARWILL *v.* AVERY, 1826-7. *Wayne and Holmes*.

Twelve votes polled for *Joseph Larwill*, were, by the committee and Senate, allowed to *Joseph H. Larwill*. (See ante p. 124, and Senate Jour. 5, 6.

[CONTRA.—HOUSE.]

1. KENDALL *v.* MCKINNEY, 1810-11. *Scioto*.

Some illegal votes had been polled on both sides; but after making all proper deductions, Daniel McKinney had a majority of *one vote*. A vote had been polled for "Daniel." This had been counted to McKinney, but the House rejected it. There was no evidence before the House as to whom it was intended for. Jour. 44, 55.

Ineligibility to Office.

I. WHAT WILL DISQUALIFY.

HOUSE.

1. MASSIE *v.* MEIGS, 1807-8. *Gubernatorial Election*.

The election of Meigs was contested on the ground that when elected he held office under the United States, and that he had not been

an inhabitant of the State for the time prescribed by the constitution. It appeared that he had spent, himself, several months out of the State during the preceding year, though he offered to prove that when leaving he declared that his absence would be temporary only. This he was not permitted to do. He admitted that he had the office of Judge of the District of *Upper Louisiana*, under the authority of the United States.

He was declared ineligible by a vote of the two houses in joint session, as follows: *Senate*—Ayes 5, nays 9. *House*—Ayes 19, nays 11.

Thomas Kirker, Esq., Speaker of the Senate, continued to discharge the duties of Governor until the next annual election. *Journal*.

2. ——— *v.* CHAS. WILLIAMS, 1814–15. *Coshocton*.

Seat contested on three grounds:

1st. That he was ineligible under the constitution. (It does not appear what the particular objection was.)

2d and 3d. Grounds not stated in the journal. The committee report, however, that they are not sustained by the testimony. The first was established by the proof, and the committee say:

“Your committee, having reference to the 26th section and first article of the constitution, relative to the first point specified in the notice, are of opinion that the said *Charles Williams* was not eligible to be a candidate at the time of his election, and consequently cannot take a seat in this House.” Agreed to by the House—yeas 46, nays 9. *J.* 81–2, 86–7.

3. ——— *v.* WILLIAM FEE, 1815–16. *Clermont*.

This seat was contested on the ground that he was at the time of his election, and still continues to be, *inspector of said county*.

The committee report that on the 24th of Sept., 1845, he was duly appointed to that office by the court of common pleas of that county, and for aught that appeared to them, he still held that office. They further report that in their opinion the office was a *lucrative one*, and that he was therefore *ineligible*.

The House concurred without division, and he was evicted. *J.*, 33–7.

4. ——— *v.* WAITSEL HASTINGS, 1817–18. *Knox*.

This seat was contested and declared vacant on the ground that he was *coroner* of Knox county at the time of his election. He resigned on the 15th of October, 1817, but this was held too late. No division. *J.*, 15, 16, 20.

5. ——— *v.* TIMOTHY BUELL, 1820–1. *Washington and Morgan*.

Election contested on the ground that he was *SHERIFF*. The committee find that he *was* sheriff on the day of election, and report a

resolution declaring the seat *vacant*. In this the *House* concurred without division. *J.*, 11, 12.

6. DORR *v.* LINZEE, 1825-6. *Athens*.

Linzee's seat was contested on the ground that he was *ineligible*. The committee report that, "they are of opinion that said *Robert Linzee* was not *eligible* as a candidate for a seat in this House on the 2d Tuesday of October last, he at that time being the *assessor* of the county of Athens." The House agreed, and he was declared not entitled to his seat. Mr. Bigger moved a resolution declaring that Dorr, the next highest candidate, was entitled to the seat. On motion of Mr. Higgins, this was amended so as to declare a vacancy, and to direct the Speaker to notify the Governor thereof. Carried, 46 to 24. *J.*, 11, 12, 35.

7. — *v.* JAS. B. GARDINER, 1825-6. *Greene*.

His seat was contested on the ground that he had published to the electors that if elected he would use his exertions to get the pay of members reduced to two dollars per day; and if not successful in doing this, he would draw the extra dollar and deposit the amount with the *county commissioners* for the use of the county. The committee found that these promises had an effect favorable to his election, and thinking it against section 2, article 7, of the constitution, and section 29 of the election act, declared him not entitled to his seat. The *House* concurred, and declared the seat vacant, 44 to 25. *J.*, 45, 46, 52, 53.

8. SEYMOUR *v.* CODDING, 1832-3. *Medina*.

Coddington's seat was contested on the ground that he was *assessor* of Medina county on the day of election. The committee report that he was such *assessor* and that *Seymour* had the next highest number of votes. They also report two resolutions. One that *Coddington* was not entitled to his seat, and the other that there is a vacancy in the seat, and that the Speaker notify the Governor. The House agreed to the report and first resolution. Mr. Robbins offered to amend the second so as to declare Seymour entitled to the seat. This was voted down, ayes 8, nays 61. The resolution then passed substantially as reported. *J.*, 16, 17, 48, 61, 65.

The last named resolution was so modified as to declare that there was a vacancy in the seat *so far as the election on the 2d Tuesday of October*, the one at which *Coddington* and *Seymour* were the candidates, *was concerned*—striking out the clause as to notifying the Governor of the vacancy.

On the 15th of November, 1832, the Governor received the *resignation* of *Coddington*, and ordered a special election to fill the vacancy.

The election was held and one *Northrup* was elected, *Codding* not being a candidate. The foregoing contest was in fact with *Northrup* instead of *Codding*. Seymour claimed that inasmuch as *Codding* was *ineligible*, he, Seymour, having the next highest number of legal votes, was elected and should have had the certificate. After the foregoing decision was made, *Northrup* was admitted to the seat.

9. CURTIS BATES, 1837-8. *Lucas, Wood, &c., counties.*

Affidavits were presented to the Senate, charging that *Bates* had not been a resident of his district two years preceding his election. The committee on Privileges and Elections was authorized to take testimony on the subject. They did so, and reported that the charge was true, and that he was therefore *ineligible*. The Senate concurred, and his seat was declared vacant. See Senate App., p. 79, 80, 92, 93, 453 to 485, 703.

II. WHAT WILL NOT DISQUALIFY.

HOUSE.

1. — *v.* WRIGHT WARNER, 1813-14. *Tuscarawas and Coshocton.*

Warner's seat was contested on the ground that he was *prosecuting attorney* at the time he was elected.

The committee reported: "That the proof submitted to your committee is insufficient to support the points specified in the said contestor's notice. Your committee are of opinion that the said Wright Warner being *prosecuting attorney* for the court of common pleas in Coshocton county is no constitutional objection to his holding a seat in the Legislature." Agreed to by the House, without division. *J.*, 65.

2. BANK DIRECTORS, 1817-18.

It was resolved, 47 to 12, that the office of *director* in a branch bank of the United States bank does not disqualify a person from holding a seat in the Legislature, and 55 to none, that the office of director in a bank of this State does not disqualify from holding the office of Representative nor Governor. *J.*, 93, 94.

3. — *v.* JAMES POPENOE, 1819-20. *Greene.*

Election contested on the ground that he was *sheriff*, and as such the holder of public moneys, &c. The committee report that he had

been sheriff, but that he resigned on the 25th of September, 1819. And that on the 6th of November he settled up and paid over all moneys collected by him as sheriff in State cases, that he is not the holder of any public money, and is therefore entitled to his seat. *J.*, 17.

4. — *v.* JOHN A. McDOWELL, 1819-20. *Franklin.*

His election was contested on the ground that he was *prosecuting attorney* of said county at the time of his election. The committee report that McDowell had been duly appointed prosecuting attorney at the August term, 1819, for *one year*, and that he accepted the office and discharged its duties. A majority of the committee were of opinion that he was *disqualified*. The House disagreed. *J.*, 68.

5. Case of LYMAN PARCHER, 1845-6. *Lucas, &c.*

On motion of Mr. Higgins, the committee on Privileges and Elections were instructed "to inquire whether Parcher was not at the time of his election, commissioner of the county of Lucas; and if such be the fact, whether or not he be *constitutionally eligible to the office of representative*."

The committee reported that such was the fact, and a majority of them reported that he was *ineligible*. The minority reported that in their opinion he was *eligible* notwithstanding. The House concurred with the *minority report*, in a vote of 40 to 10. *Journal* 13, 162, 164, 790.

6. Case of JOHN YOST, 1845-6. *Monroe.*

Same question and same decision as in the last case, but without division. *J.*, 190, 250; 725, 791.

7. Case of E. F. DRAKE, 1845-6. *Greene.*

On motion of Mr. Reemelin, the committee on Privileges and Elections were instructed to inquire whether Drake was at the time of his election, a *bank officer*; and if so, whether he was *eligible*. The committee reported that he was the *cashier* of the bank of Xenia, but that in their opinion this fact did not render him *ineligible*. The House concurred by a vote of 48 to 3. *J.*, 8, 13, 14, 96-7, 179.

SENATE.

8. — *v.* THOMAS KIRKER, 1807-8. *Adams and Scioto.*

Kirker had been elected Senator in the fall of 1805. At the session of 1806-7 he was elected Speaker of the Senate. Governor Tif-

fin having resigned before his term expired, Kirker acted as Governor. He was acting in this capacity when the election took place in the fall of 1807. Kirker was re-elected to the Senate. The committee on Elections reported him duly elected. The Senate, on the ground, *probably*, of his exercising the office of *Governor* at the time of his election, divided on the question. He was, however, declared duly elected, by a vote of 10 to 4. *J.*, 12, 15.

9. MILLIGAN *v.* ELLIOTT, 1810-11. *Jefferson*.

Elliott's election was contested on the ground that he was a *foreigner*, and unnaturalized when elected. The testimony shows this to have been the fact—that he was naturalized on the 4th day of December, 1810. On the 8th of December he appeared and presented his certificate. The session commenced on the *third* day of December. It was held by the Senate that he possessed the qualifications required by the constitution of this State to entitle him to a seat in the Senate. Yeas 11, nays 7. *J.*, 47, &c.

10. DAVIS *v.* TRIMBLE, 1825-6. *Highland and Fayette*.

Trimble's seat was contested on the ground—

1st. That being *canal fund commissioner*, he was the holder of a *lucrative* office within the meaning of Sec. 26, Art. 1, of the constitution.

2d. That being such *commissioner*, he was the *holder of public moneys*, within the meaning of the 28th section of the same article.

As there was no compensation then fixed for such commissioner, and it was uncertain that any would be, and as no money came into his hands in that capacity, the Senate held that he was the holder neither of a lucrative office nor public money. *J.*, 31, 32.

11. — *v.* ROBERT SAFFORD, 1830-31. *Gallia and Meigs*.

This seat was contested on the ground that he was *assistant marshal* of the district of Ohio when elected. The committee report—that although the fact is not *conclusively established*, it is a matter of so much importance that it demands their consideration. They proceed to argue at length that *that* is not an office either in the view of our own constitution or that of the United States. The Senate, however, *dodged* this question, by ordering the committee to strike out the argument; and then it votes him entitled to his seat on this ground that the proof did not establish the fact of his holding the office. *J.*, 53 to 58, 90, 91.

VACANCY BY RESIGNATION.

A member elect may resign his seat between the time of the election and the commencement of the session, and upon such resignation the Governor may call a special election.

HOUSE.

1. DUNCAN McARTHUR, 1804-5. *Ross county.*

Oct. 17, 1804, the Governor received the resignation of Duncan McArthur, Representative elect from Ross county, and issued a writ of election to fill the vacancy.

D. McA., having been re-elected at the special election, appeared at the commencement of the ensuing session, produced his credentials, took his seat, and was declared duly elected. See *Ex. Jour.*, and *Jour. of H.*, 1804-5, p. 3, 15, 18, 19.

2. SAMUEL MONETT, 1808-9. *Ross county.*

Oct. 19, 1808, the Governor received the resignation of Samuel Monett, a Representative elect from the county of Ross, and ordered a special election to be held on the first Friday of November, to fill the vacancy. Said Monett was again elected at the special election, appeared at the commencement of the ensuing session, presented his credentials, took his seat, and was declared duly elected. See *Ex. Jour. and House J.*, 1808-9, pages 3, 67.

3. JEREMIAH R. MUNSON, 1808-9. *Licking county.*

Nov. 15, 1808, the Governor received the resignation of Jeremiah R. Munson, as Representative of the county of Licking, and ordered a special election to fill the vacancy. Alexander Holden was elected at the special election for Licking and Knox counties, which in fact constituted the election district. He appeared on the 14th December, 1808, took his seat, and was declared duly elected. See *Ex. Journal*, and *H. Journal*, 1808-9, pages 51, 67, 68.

4. ISAAC G. BURNET, 1815-16. *Montgomery county.*

Nov. 18, 1815, the Governor received the resignation of Isaac G. Burnet, lately elected a Representative from the county of Montgomery, and ordered a special election to fill the vacancy.

George Grove was elected at the special election, appeared in the House Dec. 18, 1815, took his seat, and was declared duly elected. See *Ex. Jour. and H. Jour.* 1815-16, pp. 77, 78.

5. LEWIS NEWSOM, 1816-17. *Gallia county.*

Newsom received from the clerk a certificate of his election at the general election. David Boggs was his competitor, and contested his election. After notice of contest was served upon Newsom, he sent in his resignation to the Governor, who received it Nov. 12, 1816, and ordered a special election to fill the vacancy.

At the special election Newsom is again a candidate, and receiving the highest number of votes, received the certificate of election. Newsom appeared at the commencement of the session, presented his certificate, and took his seat.

Boggs contested his right to the seat, on the ground that he, Boggs, had a majority at the first election. The committee report that there were *two* defective returns made to the clerk, *one* of which was received by him and the other rejected. They say that both should have been rejected, or both received. In either event *Boggs* would have the majority. They therefore declare Boggs entitled to his seat.

Afterwards, Newsom presented the certificate of his election at the *special election*. The committee refer to their former report, and say that it was not in the power of Newsom, the certificated candidate, *so to resign as to* prejudice the rights of his competitor, Mr. Boggs, at the general election. See *Ex. Jour. and H. Jour.*, 1816-17, pp. 18, 19, 84, 85.

6. JOHN CODDING, 1832-3. *Medina county.*

At the regular election, *Codding* and one *Lathrop Seymour* were the candidates. Codding received the highest number of votes, and obtained the certificate. Codding was *assessor* of the county at the time of his election. His attention being called to this fact, and a notice of contest being served upon him, he resigned his seat. On the 15th of November, 1832, the Governor received this resignation and ordered a new election. At the special election, Codding was not a candidate. One Duthan Northrup was elected and received the certificate. At the commencement of the ensuing session, no one appeared to claim the seat from Medina. *Seymour*, however, presented his memorial, contesting the election of Codding at the regular election. The House held that *Codding* was not eligible as a candidate, and therefore that so far as the *general election* was concerned, *the seat was vacant*. It determined that *Seymour* was not entitled to the seat, by a vote of 61 to 8. After the determination of this contest, on the 15th day of Dec., 1832, Mr. Northrup appeared, presented his certificate, took his seat, and was declared duly elected. See *Ex. Jour. and H. Jour.*, pp. 16, 17, 48, 61, 65, 88, 116.

7. JOSEPH OLDS, 1842-3. *Pickaway county.*

Joseph Olds and *Edson B. Olds* were the opposing candidates at the general election. *Joseph* received a majority of *three* votes, and received the certificate. *Edson B.* gave notice of contest. On the 8th

of Nov., 1842, Joseph sent in his resignation to the Governor, who thereupon issued a writ for a special election to fill the vacancy. *Joseph* was *not* a candidate at the special election. *Edson B.* was; he received a majority, obtained the certificate, appeared at the commencement of the session, presented his certificate, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and H. Jour.* 1842-3, pp. 4, 22.

SENATE.

8. JOSEPH KERR, 1810-11. *Ross county.*

Nov. 26, 1810, the Governor received the resignation of Joseph Kerr, Senator elect from the county of Ross, and issued a writ ordering a special election to fill the vacancy.

James Dunlap was elected, received the certificate, and on the 24th day of December, 1810, appeared, presented his credentials, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and Senate Jour.* 1810-11, pp. 80, 81.

9. JOHN PETER ROMAIN BUREAU, 1812-13. *Gallia and Scioto counties.*

Nov. 10, 1812. John Peter Romain Bureáu, Esq., Senator elect from the counties of Gallia and Scioto, resigned that office, and the Governor issued writs of election for filling the vacancy.

Thomas Rodgers was elected at the special election, and on the 14th of Dec., 1812, appeared, presented his credentials, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and S. Jour.* 1812-13, pp. 46, 87, 88.

10. JOSEPH CANBY, 1826-7. *Miami, Shelby, Logan and Wood.*

Nov. 4, 1826, the Governor received the resignation of *Joseph Canby*, Senator elect from the counties of Miami, Shelby, Logan and Wood, and issued writs of election to fill the vacancy, to be held on the 28th, day of November, 1826.

Friday Dec. 22, 1826, Daniel M. Workman appeared, presented his certificate, (of his election at said special election,) took his seat, and was afterwards declared duly elected. See *Ex. Jour. and S. J.*, 1826-7, pp. 94, 95.

11. WILLIAM GASS, 1833-4. *Richland county.*

Nov. 12, 1833, the Governor this day received and accepted the resignation of Wm. Gass, Senator in the State Legislature, and thereupon immediately issued a writ of election for a special election to fill the vacancy.

Mathew Lind was elected at the special election, and on Friday, the 6th of Dec., 1833, he appeared, presented his credentials, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and S. Jour.*, 1833-4, pp. 114, 117.

VACANCY BY DEATH.

A vacancy occurring by the death of the person elected, between the time of the election and the session of the Legislature, may be filled by special election, called by the Governor.

HOUSE.

1. **ROBERT STEPHENSON**, 1820-21. *Columbiana county.*

Oct. 28, 1820, the Governor issued a writ of election to the sheriff of Columbiana county, requiring him to cause elections to be holden in said county for a Representative in the room of Robert Stephenson, deceased. On the 1st day of the ensuing session, the *three* members, the number to which said county was entitled, appeared, took their seats, and were afterwards declared duly elected, one of whom must have been elected at said special election. See *Ex. Jour.*; also, *H. Jour.* 1820-21, pp. 3, 73.

2. **BENJAMIN HILLMAN**, 1826-7. *Crawford, Seneca, Marion and Sandusky.*

Nov. 18, 1826, the Governor received a certificate of the death of Benjamin Hillman, Representative elect for the counties of Crawford, Seneca, Marion and Sandusky, and issued writs of election to fill the vacancy.

Eber Baker was elected at said special election, and on the 14th day of December, 1826, he appeared, produced his certificate of election, took his seat, and was afterwards declared duly elected. See *Ex. Jour.*; also, *H. Jour.*, 1826-7, pp. 77

3. **W. M. SMITH**, 1830-31. *Montgomery county.*

Nov. 20, 1830, the Governor received a certificate of the death of W. M. Smith, Representative elect from Montgomery county, and issued a writ of election to the sheriff for filling the vacancy.

Henry Stoddard was elected at the special election, and on Thursday, Dec. 9, 1830, he appeared, produced his certificate, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and House Jour.*, 1830-31, pp. 45, 52.

SENATE.

4. WILLIAM PATTON, 1805-6. *Ross, Franklin and Highland.*

Oct. 29, 1805, the Governor issued a special writ of election, requiring an election to be held on the 22d day of November, 1805, for the purpose of choosing a fit person to represent the counties of Ross, Franklin and Highland in the Senate of the State for two years from and after the second Tuesday of October, instant, in the place of William Patton, Esq., deceased. Duncan McArthur was elected at the special election, and at the commencement of the ensuing session appeared, presented his credentials, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and S. Jour.*, 1805-6, pp. 3, 7.

5. AARON GOFORTH, 1811-12. *Hamilton county.*

Nov. 23, 1811, the Governor issued a writ of election directed to the sheriff of Hamilton county, requiring him to hold an election according to law in said county to elect a suitable person to serve in the room and stead of Aaron Goforth, late Senator elect, now deceased, for said county.

Ethan Stone was elected at the special election, and on the 31st day of Dec. 1811, he appeared, presented his certificate, took his seat, and was afterwards declared duly elected. See *Ex. Jour. and S. Jour* 1811-12, pp. 110, 119.

In the absence of a proper certificate of the clerk whose duty it is to certify, the defect may be supplied by a certificate from the Secretary of State, or even by parol testimony.

HOUSE.

1. JEREMIAH H. HALLOCK. 1822-3. *Jefferson county.*

The committee on Privileges and Elections were instructed to inquire and report any facts they could obtain, to show that said Hallock was entitled to a seat. They report: "That it appears from the statement of said Hallock that he came away from home forgetting his *certificate*. That after he had come some 12 miles he spoke of it and used all means to cause it to be forwarded. This statement was corroborated by that of the other member from Jefferson county. The Steubenville Gazette of Oct. 19, 1822, shows that he was elected. The Senator from that county also corroborates these statements and circumstances. The committee unanimously recommend that he be admitted to his seat;" and the House concurred. *Jour.* 12, 14, 14.

2. *Members from Fairfield, Logan and Perry.*

The committee on Privileges and Elections report that the clerk of Fairfield county certifies that the election was held on the 13th day of October, being one day too late. This, however, they think *from parol testimony*, was a mistake of the clerks. That the clerk of Logan county left a blank where he should have inserted the time of holding the election. And that the member from Perry had neglected to get a certificate from the clerk, but had got one from the *Secretary of State*. They were all permitted to retain their seats. *House Jour.* 30.

3. SAMUEL S. HENRY, 1825-6. *Holmes county.*

The committee on Privileges and Elections report: "It appears that the member from the county of Holmes has neglected to procure the certificate of his election from the clerk of the court of that county; but has procured a *certificate from the Secretary of State*, certifying that from the abstract of votes deposited in his office from the county of Holmes, it appears that Samuel S. Henry was elected a Representative to the State Legislature at the present session, *which your committee have received as evidence of the member's right to a seat.*" On motion of Mr. Baldwin, the House agreed to the report. *Jour.* 111, 112.

4. EDWARD KING, 1826-7. *Ross county.*

The committee on Privileges and Elections, report, "It appears to the committee that Edward King, Esq., one of the members from the county of Ross, has omitted to procure a certificate of his election from the clerk of the court of common pleas for that county; but has procured a certificate to that effect from the Secretary of State, which certificate the committee have received as evidence of his election." On motion, the House agreed to the report." *House Journal*, p. 51.

5. JOHN SHELLEY, 1827-8. *Logan and Wood counties.*

The committee on Privileges and Elections report, "It appears to the committee that John Shelly, Esq., a Representative from the counties of Logan and Wood, has omitted to procure a certificate of his election from the clerk of the court of the proper county, but has procured a *certificate to that effect from the Secretary of State*, which certificate the committee have received as evidence of his claim." No further action had. The member retained his seat. *House Journal*, p. 54.

SENATE.

5. JACOB SMITH, 1808-9. *Greene county.*

JACOB BURTON, 1808-9. *Fairfield, Knox and Licking.*

Both these gentlemen appeared at the commencement of the session, presented their certificates and were sworn and took their seats.

The committee on Privileges and Elections reported that their certificates were *informal*: Smith's because the clerk had omitted to affix his *name* to it; and Burton's because it certified that he was *elected from Fairfield county*, while Knox and Licking also belonged to the district.

The report was committed to the whole Senate. Certificates were afterwards obtained from the *Secretary of State*, showing that from the returns on file in his office, Smith was duly elected from Greene, and Burton from the counties of Fairfield, Knox and Licking; and *on this evidence*, the Senate declared them duly elected. Senate Journal, pp. 4, 5, 28, 29.

6. DAVID C. BRYAN, 1809-10. *Clermont county.*

A certificate of Jeremiah McLene, Esq., *Secretary of State*, was presented to the Senate and was read, certifying that from the abstracts of votes returned to his office, it appears that David C. Bryan was duly elected Senator from the county of Clermont. Whereupon the oaths of allegiance and office were administered to him. He was afterwards declared duly elected. Senate Journal, p. 5.

7. LEWIS KINNEY, 1813-14. *Wayne county.*

The committee on Privileges and Elections reported that *from the certificate of the Secretary of State*, it appeared that Lewis Kinney was duly elected Senator from the county of Wayne. Senate Journal, p. 44.

8. DAVID PURVIANCE, 1814-15. *Miami and Preble counties.*

A certificate *from the Secretary of State* of the election of David Purviance, for the counties of Miami and Preble, was laid before the Senate, and he was admitted to his seat and afterwards declared duly elected. *Senate Journal, Tuesday, Dec. 6, 1814, page 7.*

9. JOSEPH FOOS, 1826-7. *Franklin, Madison and Union.*

The Speaker laid before the Senate an extract made from the abstracts of votes given in the Senatorial *district* composed of the coun-

ties of Franklin, Madison and Union for Senator, *as taken from the office of the Secretary of State*, from which it appeared that Joseph Foos had a majority of the votes given for Senator in that district, and, on motion, the necessary oath qualifying him as a member, was administered, and said Foos took his seat. He was afterwards declared duly elected. Senate Journal, pp. 4 and 5.

10. JOHN E. HUNT, 1835-6. *Miami, Lucas, &c., counties.*

At the commencement of the session said Hunt appeared, was sworn, and took his seat.

Afterwards, and on the same day, Senator Newell presented the certificate of the clerk of Miami county, that Patrick G. Good was duly elected from that district.

The committee on Privileges and Elections to whom this was referred, on the 16th day of Dec. 1835, reported, "That it appears from the *certificate* of the clerk of Miami county, to whom under the law, returns were to be made from all the counties in the district, that Good was elected; but from the face of the certificate that no returns from Lucas county had been received by the clerk; but agreeable to the testimony produced to the committee, *as well as the certificate of the Secretary of State*, when we include the votes of *Lucas* county, the sitting member, viz. John E. Hunt, had a majority of all the votes given in the district aforesaid, and is duly elected Senator," &c. Senate Journal pp. 4, 5, and 240.

11. BURWELL B. TAYLOR, 1840-41. *Licking county.*

B. B. Taylor, Senator from the county of Licking, presented a *certificate made by the Secretary of State*, and predicated upon the returns in his office, made by the clerk of Licking county, as his credentials; and the committee on Privileges and Elections to whom the same was referred, declared it, the certificate, to be sufficient. Senate Journal, p. 550.

12. DAVID CAMPBELL, 1828-9. *Huron, Sandusky, Wood, &c., counties.*

In this case the *committee on Privileges and Elections* had recourse to the Secretary of State's office, to correct an informal certificate. Senate Journal, p. 42.

[The difficulty with this certificate was, that it appeared from it that the votes of Huron county had not been received by the clerk who made the certificate.]

13. ROBT. F. SLAUGHTER, 1828-9.

The same committee declared Slaughter duly elected from Fairfield county, upon the evidence of a certificate from the Secretary of State. Journal, p. 42.

In the absence of a proper certificate either from the Clerk of the Court or the Secretary of State, the member will be permitted to withdraw his certificate, and substitute another in accordance with the facts.

1. DANIEL DUNCAN, 1843-4.

The *committee on Privileges and Elections*, to whom were referred the certificates of members elected to the House of Representatives, reported, "That the certificate of Daniel Duncan of Licking county, is *informal*, stating only that he was elected to the Legislature of the State of Ohio, without designating in which branch he is entitled to take his seat. Your committee recommend that Mr. Duncan be permitted to withdraw his certificate and substitute another in accordance with the facts." Agreed to by the House. Journal, p. 12.

2. SEMUEL S. CALDWELL, 1844-5. *Crawford county.*

The committee on *Privileges and Elections* report, "That the certificate of Samuel S. Caldwell, of Crawford county, was not in proper form, and recommend Mr. Caldwell be permitted to withdraw the same and obtain another in due form." Which was agreed to. House Journal, p. 14.

QUESTION OF INELIGIBILITY.

I. *House will not inquire into the ineligibility of a member unless due notice has been served by the contestor on the contestee.*

1. DANIEL C. COOPER, 1804-5.

The committee to whom was referred the memorial of James Thompson, representing that said Cooper was ineligible to hold his seat in the present General Assembly, report, "That there has no evidence appeared to this committee that the necessary notice required by law has been given; therefore, the committee think that no notice can be taken of it." The House concurred. *House Journal* p. 23.

2. CURTIS BATES, 1837-8.

CONTRA.

Curtis Bates' right to his seat was referred to the committee on Privileges and Elections, on the strength of affidavits tending to show that he had not lived *two* years in the district when first elected. The

committee report, recommending that they be empowered to take testimony, declaring that, in their opinion, *they are not precluded from doing so because no one had served a notice of contest*; and they report a resolution authorizing the committee on Privileges and Elections to take testimony touching the matter. The Senate passed the resolution, and after taking testimony the committee reported, that in their opinion, the testimony showed that Curtis Bates had not been a resident of the district for *two years* preceding his election, and that he was therefore *ineligible*. The Senate concurred, and the seat was declared vacant. He was himself elected at the special election called to fill the vacancy. See Senate Journal, pp. 79, 80, 92, 93, 453 to 485. 703.

Right of the Legislature to alter Representative Districts by the erection of new counties or the change of the lines of old ones, between the times of quadrennial apportionments.

1. *Members from Perry, Fairfield, Muskingum and Washington.*

An enumeration of white males had been taken in 1815, and Feb. 28th, 1816, an apportionment bill was passed, giving to Fairfield county *three Representatives*.

In December, 1817, an act was passed to organize the county of Perry, out of the counties of Fairfield, Washington and Muskingum. On the 27th of Jan., 1819, an act was passed to amend the said apportionment act, so as to give to Perry county one member, and to reduce the number for Fairfield to *two*.

Members were elected in pursuance of this amendment, and a memorial was presented, asking that these elections might be held *void*; and that *new elections be ordered from the limits of the old counties*, as provided in the act of 1816.

The committee reported, that the members from Fairfield had not been constitutionally elected; and that the same was the case with the member from Perry. On motion of Mr. Kelley, the House disagreed. To the first, yeas 53, nays 6; to the second, yeas 44, nays 16. House Journal, pp. 88, 89, 90.

2. CHANDLER vs. BETTS, 1845-6. *Morgan county.*

At the preceding session of the Legislature, there had been annexed to the county of Morgan, two townships and six sections, from the county of Athens, no express provision being made as to where the

townships and sections should vote for Representative. The clerk of Morgan county rejected the returns from these two townships on the ground that they did not belong to the Morgan county Representative district. This gave Mr. Betts a majority over Chandler. Chandler presented his memorial, claiming the seat. The majority of the committee on Privileges and Elections reported in favor of Chandler; the minority of the committee, in favor of Betts.

The House agreed with the majority of the committee, by a vote of 40 to 27, and Chandler was admitted to the seat. House Journal, pp. 12, 13, 19, 93, 119, 153, 157, 162—4, 166.

See 3 sec. of the 7 art. of the con. of O.

See also Crawford Co. *vs.* Marion Co., 16 Ohio Rep. by Griswold.

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All of which is respectfully submitted.

JOHN F. BEAVER, *Chairman.*

REPORT

OF THE

COMMITTEE RESPECTING WESTERN RESERVE SCHOOL LANDS.

IN SENATE—FEBRUARY 20, 1849.

The Select Committee to whom the resolution respecting the Western Reserve School Lands, was referred, respectfully

REPORT:

That under the laws of the United States, of March 3d, 1803, and of June 19th, 1834, there was granted to the State of Ohio, for the support of schools upon the Connecticut Western Reserve, a quantity of lands, within said State, equal, in the aggregate, to one thirty-sixth part of said Reserve, that being the proportion granted by the United States, for like purposes to the residue of the State.

The entire area of the counties composing the Western Reserve, is 3,336,921 acres, one thirty-sixth part of which is 93,525½ acres. Of this last quantity, by the act first named, there was granted to the State for the above purpose, 55,767½ acres, which were located in the counties of Holmes and Tuscarawas, and by the latter act, the additional quantity of 37,758 acres, being the residue of the grants. The lands in the counties of Holmes and Tuscarawas, have been selected and sold, and the proceeds invested in the Western Reserve School Fund. Those granted by the act of 1834, remain unsold, and a very considerable portion of them are yet to be obtained from the general government.

In conformity with this latter act, and in pursuance of instructions from the Commissioner of the General Land office, Gov. Lucas, in the month of September next after its passage, appointed Daniel Kerr, of Lake county, agent of the State to make the entries and selections of the lands to which the State was entitled under it. The agent soon after his appointment, entered upon the duties of his agency, completed his selections in the spring following, amounting to 37,786 89-100 acres, and made return of a schedule of them to the Office of the State Executive, May 1835. A copy of this list of selections is appended to this report. The lands comprised in it

are found in the present counties of Putnam, Defiance, Henry, Williams, Paulding and Van Wert. This list was afterwards submitted to the President of the United States, for his approval, and for some cause, not known to your committee, no part of it received his sanction till the month of February, 1837. At that date, as appears from a communication from the Commissioner of the General Land Office, now in the office of the Governor, under date of November 11, 1848, the President gave his approval to 29,403 98-100 acres only of those sections, leaving unapproved of those selected, 8,383 01-100, and a real deficiency in the quantity to which the State was entitled, of 8,354 02-100 acres. Your committee have prepared and appended to this report, separate lists of these lands exhibiting those approved by the President as well as those not approved. The reasons for withholding the sanction of the President from so large a portion of these lands, do not fully appear to the committee, but it is believed, that the larger portion of those not approved, either prior to May 19, 1834, or between that date and the month of February, 1837, had been appropriated as Ohio Canal Lands. Whatever may be the truth in this particular, the fact of the deficiency, and the extent of it, are certain; and it is equally certain that, under the act in question, land to the amount of that deficiency, still remains due from the United States to this State.

The committee appointed by the last General Assembly upon the subject of these lands, do not, at the time they made their report, appear to have been apprised of the fact that all of the original selections had not been approved; nor does this deficiency appear to have been discovered till since the adjournment of the last Legislature. No measures have yet been taken to supply it. It is not supposed that any further legislation, either by this State or the United States, is necessary in the premises. It is believed that the powers of the Governor, and those of the Executive departments at Washington, are sufficient under the law, as it now stands, and that the United States still own unsold lands in this State that would be subject to selection and entry under the act of 1834. Your committee therefore recommend that the Governor be requested to take such measures as, in his discretion, he may deem proper to insure the selection of the lands still due; and to the security of the title of the State to them: and they accordingly accompany their report with a resolution to be submitted for that purpose.

By an act of the General Assembly, passed February 8, 1833, the inhabitants of the Western Reserve were authorized, at the ensuing October election, to give their assent to the sale of those lands. That assent was then given. The same act provides that in case of sale, the lands should be appraised at their cash value, and that they should not be sold for less than the appraisal, and it also contemplated further legislation in respect to the time, mode, and terms of sale. For the purpose of effecting these objects and carrying into effect the will of the people, as already indicated, in respect to these lands, your committee have reported a bill which is herewith submitted.

WHEREAS, under the act of Congress of June 19, 1834, there is now due to the State of Ohio, for the support of Schools upon the Connecticut Western Reserve, 8,354 acres of land, as a portion of the grant made by the act aforesaid—Therefore :

Be it resolved by the General Assembly of the State of Ohio, That the Governor be requested, at his earliest convenience, to take such measures as, in his discretion, he shall deem proper for the speedy settlement of said claim, and for the securing to the State, the lands still due under the grant.

Respectfully submitted,
SAMUEL T. WORCESTER,
F. S. BACKUS,
L. SWIFT.

LIST OF SCHOOL LANDS

Selected by DANIEL KERR, as Agent of the State of Ohio, in the year 1834 and 1835, under the Act of Congress of June 19, 1834, making a grant of Lands to said State for the support of Schools upon the Connecticut Western Reserve:

(See original List on file in the office of the Governor.)

PUTNAM COUNTY.

Sect.	What part of Section.	Tp.	R'ge.	No. of Acres.	Total.
18	South half and n e quar	1 S.	6 E.	482.16	
19	All of	1 "	6 "	646.67	
30	All of	1 "	6 "	644.38	
10	South half and n w quar	1 "	6 "	480.00	
11	South half and w half of n e quar .	1 "	6 "	400.00	
12	All except west half of n w quar..	1 "	6 "	560.00	
32	North half south e quar	1 N.	6 "	480.00	
33	All of	1 "	6 "	640.00	
4	North half and south e quar	2 "	5 "	480.00	
9	All of	2 "	5 "	640.66	
15	All of	2 "	5 "	610.00	
5	North west quar	2 "	5 "	154.57	
24	North half	2 "	5 "	320.00	
14	South half	2 "	5 "	320.00	
23	North half	2 "	5 "	320.00	
19	South west quarter	2 "	6 "	163.20	
9	All of	1 "	5 "	640.00	
10	North half	1 "	5 "	320.00	
15	All except frac n side river } and n w frac south side }	1 "	5 "	533.62	-8,865.26

DEFIANCE COUNTY.

29	East half	3 N.	5 E.	320.00	
18	All of	3 "	5 "	584.60	
32	N e quar	3 "	5 "	160.00	
28	All of	3 "	5 "	640.00	
30	South w quar	3 "	5 "	127.44	
13	All of	3 "	4 "	610.00	
23	All of	5 "	5 "	640.00	
24	All of	5 "	5 "	640.00	
22	S e quar and e half n e quar	5 "	5 "	240.00	
2	N e quar and w half of s e quarter	5 "	5 "	239.91	-4,331.95

LIST OF SCHOOL LANDS—Continued.

HENRY COUNTY.

Sect.	What part of Section.	Tp.	R'ge.	No. of Acres.	Total.
3	All of	5 N.	6 E.	640.00	
4	All of	5 "	6 "	640.00	
5	All of	5 "	6 "	640.00	
7	All of	5 "	6 "	640.00	
8	All of	5 "	6 "	640.00	
9	All of	5 "	6 "	640.00	
10	All of	5 "	6 "	640.00	
21	All except e half of s e quar	6 "	6 "	580.00	
34	All of	6 "	6 "	640.00	
12	All of	6 "	6 "	640.00	
13	North e quar	6 "	6 "	160.00	
9	N e quar	6 "	7 "	160.00	
4	S e quar and west half of n e quar	6 "	7 "	201.73	
8	East half	6 "	7 "	320.00	
18	All of	6 "	7 "	637.20	
4	All of	6 "	8 "	615.40	
9	All of	6 "	8 "	640.00	
4	All of	4 "	7 "	659.86	
5	All of	4 "	7 "	659.08	
3	All of	4 "	7 "	658.66	
10	All of	4 "	7 "	640.00	
13	All of	4 "	6 "	640.00	
14	All of	4 "	6 "	640.00	
24	All of	4 "	6 "	640.00	
25	All of	4 "	6 "	640.00	
7	All of	4 "	7 "	641.36	14,893.29

WILLIAMS COUNTY.

1	Whole except n half of n w quar ..	6 N.	1 E.	559.37	
11	East half	6 "	1 "	320.00	
3	S $\frac{1}{2}$ ex. on s side riv & s e $\frac{1}{4}$ of n e $\frac{1}{4}$..	6 "	1 "	335.05	
10	North west quar	6 "	1 "	160.00	
31	All except most northerly fraction.	7 "	2 "	641.63	
30	All except most southerly fraction.	7 "	2 "	606.17	
19	All except frac e side river	7 "	2 "	646.55	
20	All except frac w side river	7 "	2 "	579.33	
26	All of	7 "	1 "	640.00	
35	All except s e fraction	7 "	1 "	629.96	
36	All except s e fraction	7 "	1 "	518.61	
34	West half	6 "	2 "	320.00	
33	East half	6 "	2 "	320.00	6,276.67

LIST OF SCHOOL LANDS—Continued.

VAN WERT COUNTY.

Sect.	What part of Section.	Tp.	R'ge.	No. of Acres.	Total.
13	South half	2 S.	2 E.	320.00	
24	All of	2 "	2 "	640.00	
1	South half	2 "	2 "	320.00	
12	East half	2 "	2 "	320.00	1,600.00

PAULDING COUNTY.

35	All of	1 N.	3 E.	640.00	
36	All of	1 "	3 "	640.00	
31	All of	1 "	4 "	639.72	1,919.72

Counties.	No. of Acres.
Putnam	8,865.26
Defiance	4,231.95
Henry	14,893.29
Williams	6,276.67
Van Wert	1,600.00
Paulding	1,919.72
Total	37,786.89 in all selected.

LIST OF LANDS

Comprised in the foregoing Schedule made as aforesaid, under the Act of June 19, 1834, and approved by the President of the United States, February 3, 1837, as certified by Richard M. Young, Commissioner of the General Land Office, under date of November 11, 1848.

PUTNAM COUNTY.

Sect.	What part of Section.	Tp.	R'ge.	No. of Acres.	Total.
18	South half and n e quar	1 S.	6 E.	482.26	
19	All of	1 "	6 "	646.67	
30	All of	1 "	3 "	644.38	
10	North w quar and south e quar . .	1 "	6 "	320.00	
11	South half of	1 "	6 "	320.00	
12	South half and n e quar	1 "	6 "	480.00	
32	North half and s e quar	1 N.	6 "	480.00	
33	All of	1 "	6 "	640.00	
4	North half and s e quar	2 "	5 "	480.66	
9	All of	2 "	5 "	640.00	
15	All of	2 "	5 "	640.00	
5	North west quar	2 "	5 "	154.57	
24	North half	2 "	5 "	320.00	
14	South half	2 "	5 "	320.00	
23	North half	2 "	5 "	320.00	
19	South west quar	2 "	6 "	163.20	
9	All of	1 "	5 "	640.00	
10	North half	1 "	5 "	320.00	
15	South half	1 "	5 "	316.87	-8,328.61

DEFIANCE COUNTY.

29	East half	3 S.	5 E.	320.00	
18	All of	3 "	5 "	384.60	
32	North e quar	3 "	5 "	160.00	
28	All of	3 "	5 "	640.00	
30	South west quar	3 "	5 "	127.44	
13	All of	3 "	4 "	640.00	
23	All of	5 "	5 "	640.00	
24	All of	5 "	5 "	640.00	
22	South e quar	5 "	5 "	160.00	
2	North e quar	5 "	5 "	160.41	-4,072.45

LIST OF LANDS—Continued.

HENRY COUNTY.

Sect.	What part of Section.	Tp.	R'ge.	No. of Acres.	Total.
4	All of	5 N.	6 E.	640.00	
5	All of	5 "	6 "	640.00	
8	All of	5 "	6 "	640.00	
24	West half	6 "	6 "	320.00	
34	All of	6 "	6 "	640.00	
12	All of	6 "	6 "	640.00	
13	North e quar	6 "	6 "	160.00	
9	North e quar	6 "	7 "	160.00	
4	South e quar	6 "	7 "	160.00	
18	All of	6 "	7 "	637.20	
4	All of	6 "	8 "	615.40	
9	All of	6 "	8 "	640.00	
4	All of	4 "	7 "	639.86	
3	All of	4 "	7 "	658.66	
10	All of	4 "	7 "	640.00	
14	All of	4 "	6 "	640.00	
24	North west quar	4 "	6 "	160.00	
25	All of	4 "	6 "	640.00	-9,291.12

WILLIAMS COUNTY.

1	South half	6 N.	1 E.	320.00	
11	East half	6 "	1 "	320.00	
3	South west quar	6 "	1 "	160.00	
10	North west quar	6 "	1 "	160.00	
19	West half	7 "	2 "	373.94	
20	North half and south east quar....	7 "	2 "	452.39	
30	North half	7 "	2 "	325.75	
31	South east quar	7 "	2 "	160.00	
26	All of	7 "	1 "	640.00	
35	West half and north e quar	7 "	1 "	480.00	
36	North west quar	7 "	1 "	160.00	
33	East half	6 "	2 "	320.00	
34	West half	6 "	2 "	320.00	-4,192.08

VAN WERT COUNTY.

1	South half	2 S.	2 E.	320.00	
12	East half	2 "	2 "	320.00	
13	South half	2 "	2 "	320.00	
24	All of	2 "	2 "	640.00	-1,600.00

List of Lands—Continued.

PAULDING COUNTY.

Sect.	What part of Section.	Tp.	R'ge.	No. of Acres.	Total.
35	A'l of	1 N.	3 E.	640.00	
36	All of	1 "	3 "	640.00	
31	All of	1 "	4 "	639.72	1,919.72

Counties.	No. of Acres.
Putnam	8,329 61
Defiance	4,072.45
Henry	9,291.12
Williams	4,192.08
Van Wert.....	1,600.00
Paulding	1,919.72
Making in all	29,403.98
Approved by the President.	

LIST OF LANDS

Comprised in the aforesaid selections, under date of June 19, 1834, and not yet approved by the President, so far as appears.

PUTNAM COUNTY.

Sect.	What part of Section.	Tp.	R'go.	No. of Acres.	Total.
10	South west quarter	1 S.	6 E.	160.00	
11	West half of n west quar	1 "	6 "	80.00	
12	East half of north w quar	1 "	6 "	80.00	
15	North half except fraction	1 N.	5 "	216.75	—536.75

DEFIANCE COUNTY.

22	E half of north e quar	5 N.	5 E.	80.00	
2	West half of south e quar	5 "	5 "	79.50	—159.50

HENRY COUNTY.

3	All of	5 N.	6 E.	640.00	
7	All of	5 "	6 "	640.00	
9	All of	5 "	6 "	640.00	
10	All of	5 "	6 "	640.00	
24	N e quar and w half of s e quar ..	6 "	6 "	260.00	
4	West half of n e quar. part of	6 "	7 "	41.73	
8	East half	6 "	7 "	320.00	
5	All of	4 "	7 "	659.08	
13	All of	4 "	6 "	640.00	
24	South half of n e quar	4 "	6 "	480.00	
7	All of	4 "	7 "	641.36	—5,602.17

WILLIAMS COUNTY.

1	N e quar and south half of n w $\frac{1}{4}$..	6 N.	1 E.	239.37	
3	S e $\frac{1}{4}$ ex. frac s side & s e $\frac{1}{4}$ of n e $\frac{1}{4}$..	6 "	1 "	175.05	
19	East half except fraction	7 "	2 "	272.61	
20	South west quarter	7 "	2 "	126.91	
30	South half except fraction	7 "	2 "	280.42	
31	N half and s w quar except frac ..	7 "	2 "	481.63	
35	South e quar except frac	7 "	1 "	149.96	
36	East half and south w quar	7 "	1 "	358.61	—2,084.59
Making in all not approved					8,383.01

RECAPITULATION.

LANDS APPROVED.		LANDS NOT APPROVED.	
Counties.	Acres.	Counties.	Acres.
Putnam	8,328.61	Putnam	536.75
Defiance	4,072.45	Defiance	159.50
Henry	9,291.12	Henry	5,602.17
Williams	4,192.08	Williams	2,084.95
Van Wert	1,600.00		
Paulding	1,919.72		
In all.....	29,403.98	In all	8,383.01

	Acres.
Due under the Act of June 19, 1834,.....	37,758.00
Approved of those heretofore selected	29,403.98
Still due	<u>8,354.02</u>

REPORT

OF THE

SELECT COMMITTEE ON THE MEMORIAL OF THE PRACTICAL PRINTERS OF COLUMBUS, PRAYING FOR PROTECTION AGAINST RATS.

IN SENATE—MARCH 19, 1849.

The select committee to whom was referred the memorial of the Practical Printers of the city of Columbus, praying for protection against *Rats*, have had the same under consideration, and now ask leave to report: That the species of *Rats* referred to by the memorialists, are far different in *genus* from those pestiferous animals which harrass housewives and the granaries of the farmers; and unlike the Norway Rat, which digs under ground and undermines the foundation of the most stupendous buildings—but the effect of the pestiferous class to which the memorial refers, is equally deleterious upon the interests and welfare of that meritorious class of mechanics, the Practical Printers. For, as the house rat steals into the farmer's cellar or granary and destroys the proceeds of a season's toil, or the Norway Rat who undermines the buildings of the solid foundation; so do these *Printer Rats* creep into the printing offices of the State, and by reducing the price of *labor*, destroy the prosperity and happiness of all those who depend upon the profits of labor to support their families, and properly educate their children. Not only do they do this, but like the Norway Rat, they undermine the very foundations upon which the prosperity of labor depends, viz: a fair compensation for services rendered! But notwithstanding the great inroads which have been made upon the prosperity of the *craft* by persons who claim to be *Printers*, who knew little or nothing about good workmanship, yet experience has fully demonstrated that under our institutions, it would be bad policy for government to interfere in the establishment of prices to be paid journeymen, or to require the service of a regular apprenticeship at any trade or profession, before working thereat, or practicing therein. The history of the old world, where the mechanic is looked upon as a serf, is pregnant with arguments why we, who profess to be governed by a fair principle of equity, should not follow their pernicious example, and degrade labor, and filch from the laborer the profits of his toil.

Your committee are opposed to government interfering with or establishing the time of service at a trade, and equally opposed to any attempt to establish the prices to be paid for advertising, book or job-work, executed by printers, any more than for work and labor performed by other mechanics. The Legislature of this State has heretofore assumed the right of fixing the amount of matter that shall constitute a *square* in advertising, and also the recompense that shall be paid for the same. This your committee believe to be radically wrong, for if publishers of newspapers are compelled to publish advertisements for the State at lower prices than is done for individuals, the loss must come, individually, off of the journeyman, who works for a subsistence, and who is by circumstances compelled to submit to be *robbed*, rather than be thrown out of employment and *starved*.

There is a standard known among mechanics, of every trade, for the value of every species of labor. And the policy of the State ought to be to pay fair and remunerating prices for all labor performed for the public advantage. It may be economical in one point of view, for the State to put out its work to the lowest bidder; it may lessen the drain upon the public treasury; but the general interests of society, and consequently of the government, depend upon the prosperity of the *laborer*; hence it is not only the interest, but the duty, of the State, to protect *labor*. The system of auctioneering out all public work to the lowest bidder, is a mean and niggardly way of doing business on the part of the State. Because, if a contractor deceives himself in his calculations or estimates, the *laborer*, or the State itself, will be cheated—for a large majority of such contractors look out for their own interests first of all. On nearly all the public works of the State, while they have cost the people nearly double what they ought to have done, yet the laborer who dug your canals, and built your locks and bridges, was meanly and niggardly paid! Demagogues talk about political favoritism, when public officers of one party give employment to their party friends—but in our government, where public officers are so often changed, and so directly accountable to the people, this system is far better than that of public bidding, where the laborer is sure to be robbed! As remunerating prices are always understood among mechanics, a committee of disinterested mechanics should be appointed to say what were fair prices for certain works, and then let public officers select whom they please to do the jobs; being responsible only for its faithful and workman-like execution.

It is an undeniable fact, that gross injustice has been done the Practical Printers of this State, by the change in the law regulating public printing, as the journeymen who performs the labor, has to lose all the deduction made in prices! Extravagance seems to characterize almost all other acts of your legislation; but on the printing question, demagogues deem it of importance to make a *show* of economy—but while they design to vent their spleen upon the editor of a newspaper as contractor, the blow falls upon the poor Printer, whose

daily compensation is lessened ; and the daily wants of his family test the injustice of such legislation. This is manifest, as the prices paid by the former State Printer were two and three dollars per week more than is now paid on State work !

Since the late change in the State printing law, near thirty thousand dollars have been filched from the pockets of Journeymen Printers of this State, on account of the effect of that act, lowering the prices paid by the State Printer, and his prices having an influence over other employers in the State.

Your committee, therefore, consider *the State*, the meanest *Rat*, against which Practiral Printers have to contend—and it is recommended that the legislators who commenced this system, should cover their faces for shame, and resolve to do justice in future, by paying a fair and remunerating price for all labor performed for the public.

The committee ask to be discharged from the further consideration of the subject.

Respectfully submitted,

A. G. DIMMOCK.

REPORT

OF THE

STANDING COMMITTEE ON UNIVERSITIES, COLLEGES, AND ACADEMIES.

IN SENATE—Feb. 13, 1849.

The standing committee on Universities, Colleges, and Academies, to whom was referred the annual report of the Secretary of the Miami University, have had the same under consideration and would now respectfully submit the following report:

By an act of Congress, approved of March 3d, 1803, an entire township of land was granted and vested in the Legislature of the State of Ohio, for the purpose of establishing an academy, &c. In 1809, the university was, by act of this General Assembly, “established and instituted for the instruction of youth in all the various branches of the liberal arts and sciences, the promotion of good education, virtue, religion, and morality, and for conferring all the literary honors granted in similar institutions. The lands have been let to tenants upon what are termed forfeited leases, reserving a rent equal to six per cent. on the original supposed value of the lands. From this source an income is derived of some \$5,350 per annum, which, during the past year, was increased by incomes from other sources to the sum of \$8,884. The expenditures during the year were \$8,794. There have been erected a fine college edifice, and other buildings, for the convenience of students and professors; a suitable laboratory and apparatus has been provided, and a respectable library procured. The situation of the institution is pleasant and healthy, and peculiarly inviting to those who seek a quiet retreat for study.

For many years the institution seemed to flourish and fill the design of its creation. As many as two hundred and fifty students from different states in this union, were at one time in attendance, and many of our most talented business men look back with pleasure upon the days spent at Miami University, their alma mater. It was indeed the pride of the State, and of the West. Parents sent their sons from Virginia, Kentucky, Tennessee, Mississippi, Alabama, Louisiana, Missouri, Illinois, and Indiana, to receive the honors of Miami University. Such was once its great name—such was once its promise. It is painful to your committee, as it must also be to every friend of education, to contrast the former highly prosperous condition of the institution with its present fallen fortunes. Now, instead of attracting attention

and support from almost all the states of this union, and crowding its recitation rooms with hundreds of students, about thirty-five students is all that the institution can boast of. A faculty of six professors (including the president and the principal of the preparatory department,) is here kept up, and an expenditure of near \$9,000 per annum is made to confer benefits on this very small number; and it is much to be feared that even they, owing to the discord which unhappily exists there, the spirit of insubordination, and the habits of vice and dissipation which have been contracted, are not receiving much if any real benefit from the institution. Your committee cannot refrain from expressing the opinion that the present management of the institution is a most flagrant abuse of the liberal and praiseworthy donation made by Congress for its endowment. A proper respect for the donor, as well as the interest of the rising generation, and the reputation of the institution, demand the exercise of the guardian care of the Legislature in the faithful exercise of the trust conferred upon us. The sum expended at this institution, which in the opinion of your committee is little better than thrown away, would alone be sufficient to defray the expenses (exclusive of boarding,) of about 200 students, at the Western Reserve College, or almost any other in the West.

Of what may have been the cause of this decline in the fortunes and fame of the institution, your committee will forbear to express an opinion lest their limited means of information should lead them into error. But your committee would earnestly recommend the raising of a committee of suitable persons to examine particularly into the abuses and defects which may have existed, and the causes of the decline of the institution, and report the same to the next session of this General Assembly, with such recommendations for the improvement of the condition of the University as they may deem proper. Your committee have accompanied this report with a joint resolution to this effect, and they recommend its passage.

It is ascertained by your committee that Rev. David McDill, one of the trustees, whose term of service would expire on the first day of March, A. D., 1851, has removed from the State, and thereby a vacancy has occurred in said board. Your committee would recommend the appointment of Hermon B. Mayo, of Butler county, to fill the vacancy thus occasioned, and they report a bill accordingly.

REPORT
OF THE
STANDING COMMITTEE ON MEDICAL COLLEGES AND
SOCIETIES, ON HOUSE BILL No. 118.

IN SENATE—*February 28, 1849.*

The Standing Committee on Medical Colleges and Societies, to which were referred sundry petitions and House Bill No. 118, proposing a change in the medical management of the Commercial Hospital and Lunatic Asylum in Cincinnati, have had the same under consideration, and now submit the following

REPORT.

Your Committee would remark in limine, that as the subject on which they have been required to express an opinion, they deem a very important one, they have endeavored to bestow upon it that careful consideration which its intrinsic merits might seem to demand. The question before you, is one which involves the treatment of the sick and the management of the insane; we trust, therefore, that we may be borne with, if we examine it somewhat at length; for the decision which this honorable body may make upon that vital question, may have an important bearing upon an unfortunate class of our fellow-men. And it becomes the more important, that this matter should be thoroughly investigated at this critical moment—when every means which ingenuity can devise, have been attempted to be brought to bear upon the members of this General Assembly: designed to mislead them upon a question of such thrilling interest to suffering man! And when we view the circumstances which have existed here, we would not think it at all strange, that those whose attention has not been devoted to the study of disease and its treatment, should be, in some measure, led astray by the delusive arguments which have been cunningly impressed upon them. For there is no department in the whole circle of science in which the worse may as readily be made to appear the better cause, as in that God-like art, whose province it is to restore the blind to sight, the insane to reason, and the diseased to health. And

though that noble branch of science has occupied the attention of some of the most gigantic intellects who have adorned our world through almost a century of ages; and though all has been done which patient investigation could effect, or the ingenuity of man could devise, to develop those mysteries which are connected with the creature man, yet the conscientious scholar will frankly admit, that there are matters connected with that wonderful piece of mechanism, which still continue to elude the earnest grasp of the investigator, and which, after centuries of incessant toil and research, still remain beyond our comprehension—among the inscrutable arcana of nature. Such will be the confession of the honest enquirer after truth—even though he may have grown grey in the study of nature's handiwork, in which he may have encircled his brow with those unfading laurels which shall embalm his memory for ages yet to come. But how widely different is the course pursued by the demagogue and impostor! For while he meets with nothing but what he pretends to comprehend, you may hear him discoursing fluently on subjects of whose real nature he knows no more than the child unborn; and while, like the vaunting Paracelsus, no disease can be too virulent for his matchless skill, when he the story tells, you may behold him in the happiness of his ignorance, ostentatiously pouring forth his wonderful exploits, to tickle the itching ear of the astonished multitude! In the midst of all this pompous display, the credulous public mistake his impudence for intelligent assurance—his unmeaning but high sounding terms for professional erudition—and the boldness of his assertions for actual knowledge; he has, therefore, gained his point—for the time being he is proclaimed the wisest man of the age, and ignorance and impudence have triumphed over science and honesty!! Hence, it becomes important that we look at things as they really are, and not merely through that deceptive coloring, which ingenuous cunning may imprint upon them. And as the case before us presents a character which it does not possess, it becomes our duty to tear away the deceptive veil which has been thrown around it, that it may be fairly exhibited in its naked deformity.

The legislature is asked for the passage of a law, the object of which shall be to so far change the management of the Commercial Hospital and Lunatic Asylum in Cincinnati, as to open that institution equally to the medical and surgical management of all the medical schools which are now located in that city, however discordant the faculties of those schools may be, in their notions of the nature and treatment of disease!

And as an argument in favor of the proposed change, it is contended that this is a State institution, and that you are therefore bound, upon the principle of "equal rights," to remove from its government those monopolizing features which are declared to exist.

Now, this may all appear very plausible, but it is only that kind of plausibility which must vanish before the light of reason and experience. And some of the petitioners have even gone so far as to claim that the inmates of a public institution should each be permitted to choose his own medical and surgical attendants! But with all due de-

ference to those who have been made to believe that such a course would be practicable or proper, we feel no hesitation in saying that they know not what they ask. It would scarcely seem that any argument was necessary, to demonstrate the utter impropriety of such a procedure; for all those who have any knowledge of the nature of such an institution, must perceive that it would be replete with none but the worst of consequences.

Those who are seeking to effect their purposes in effecting the change which has been proposed, assert that this institution is an "odious monopoly;" and in an attempt to appeal to our prejudices, we are led to infer that it is sustained for the special benefit of the Medical College of Ohio! But than this, nothing can be more entirely destitute of truth.

For we assert that it was no such motive which induced the State to embark in this laudable enterprise, as will be obvious to all those who can appreciate her generous character. Benevolence, and benevolence alone, led her to contemplate the miserable condition of the boatmen in the great valley of the Mississippi; and actuated as she was, by the most noble impulses, she resolved to extend a helping hand to her suffering sons. Long had that useful class of persons, whose services give activity to commerce, and bring back to the husbandman a reward for his labors, when overtaken by disease or accident, been subject to the grossest imposition and the most heartless neglect; and it was to provide against the further continuance of such contingencies, that several of the States wisely interfered in their behalf. And while other States were engaging in this great work of benevolence, Ohio was not disposed to be outdone by any of her sisters west of the Alleghanies; she therefore proceeded to establish the Commercial Hospital and Lunatic Asylum, by an act bearing date the 22d day of January, 1821. It was made the duty of the trustees of the township of Cincinnati, to procure a suitable site out of the funds of the township, to direct and superintend the construction of the buildings, to keep a general supervision over the whole affair, and to adopt such measures as might from time to time be necessary for securing the great object sought to be attained by its erection.

And will any one pretend to say, that when the State had determined to establish an institution like this, she was attempting to play off a fraud upon the world, and that while she was holding it up as a charitable retreat for the afflicted, she was merely designing it for the benefit of her Medical College.

It is true, that such a charge has not been expressly made, but the idea has been held out, that one of the objects in establishing this institution, was to make it a school for clinical instruction! But this, we totally deny. And we take the liberty to assert, that the State never could have been guilty of an act so base and contemptible, as to establish an institution under the pretext of benevolence, while sordid selfishness was at the bottom of it all. But in aiding, as she did, in the founding of this institution, she was governed by no other motives than those which were worthy of herself—a desire to establish a com-

mon rendezvous for that portion of her citizens who were engaged in the navigation of the great rivers of the west, and to rear an asylum to which they might flee, to seek relief from those ills which beset the path of the wayfaring man. It was truly a noble and praiseworthy act; but it was no more than might have been expected from the representatives of a humane and generous people. For while the hardy pioneers who peopled the fertile plains of our beautiful State, were surrounded by the friendly circle and the comforts of domestic bliss, the distant wail of their less fortunate brethren was wafted up the majestic Mississippi, until it had re-echoed from the banks of their own beautiful Ohio; and with that generous sympathy ever characteristic of a gallant people, they invited them to the hospitalities of that home prepared for the sons of affliction. And who will doubt but that noble act has gladdened the hearts of thousands of our fellow-men. But the legislature having determined that the institution should be established, it next became necessary to fix upon some suitable place for its location; and as the whole design was for the special benefit of the boatman and the stranger, what place could have been more appropriate than the queen city of the west? In that city was a Medical College which the State could call her own; and as the institution was intended as a charitable one, it was made the duty of the faculty of the Medical College of Ohio, to take it under their fostering and protecting care. And though that faculty have been required to render their services without fee, yet that they have faithfully discharged their duty, in nurturing and attending it well, its prosperous and flourishing condition most amply demonstrates. For it has been entirely under the skilful management of that faculty, that the institution has acquired a rank among the foremost in the great valley of the west. And though gentlemen may prate to us about the privileges enjoyed by the Medical College of Ohio, let us remember that such privileges are but the fruit of the labors of its own faculty, who have been so successful in building up the institution which had been committed to their care. Who, then, upon the principles of common justice, could be better entitled to enjoy the benefits of those privileges, than that faculty which has sustained the institution and reared it up to maturity? But we place this question upon higher grounds than the mere relative right of one faculty or of another; for we contend that our duty to the unfortunate invalids who have cast themselves upon our charity, rises high above all other considerations which can be presented to our view. But when that course which will best promote the welfare of the hospital and its inmates, is the one which will harmonize with the principles of justice to those who have heretofore had it under their care, it would seem that our duty was sufficiently clear to leave no room to hesitate. But that argument which has been pressed more cogently than any other in favor of the passage of the bill before us, is that this institution is a "monopoly," and that the legislature is bound to destroy its monopolizing features!

Such kind of talk may all appear well enough in theory; but will the passage of this bill destroy those grievous and objectionable fea-

tures which are so much complained of? If that institution is such an odious monopoly—will it be any the less so by merely increasing the number of the monopolists? It may be well enough to look a little at this feature; for it must be recollected that not only all other medical faculties, but that the whole medical profession are entirely excluded; and the monopoly will then consist of the faculties of the three schools which *now* exist in the city of Cincinnati! Were another medical school to be incorporated in that city, that faculty would have no right to participate in the management of the hospital! and yet this bill was got up under the specious pretext, of extending “equal rights” to all!

No one can carefully examine the provisions of the bill before us, the same time taking into consideration the arguments which have been urged in favor of its passage, without being forcibly impressed with the utter absurdity of the scheme! For the same principle which has been held up as so peculiarly odious, will still remain attached to that institution, in all its unseemly proportions! And after all the hue and cry which has been made upon the subject, the monopoly will be as complete as ever, for the benefits of the institution can only be enjoyed by a privileged few.

And when it is considered that the monopoly which this bill creates must be equally odious in principle with the one which it pretends to destroy; it must appear strange indeed, that such an attempt should have been made to mislead the General Assembly. We trust however that there is too much sagacity among the members of this Senate, to be thus easily entrapped.

But if there is anything in the argument which gentlemen out of doors have been pressing upon the attention of members, the same argument would require you to throw open to the medical public, every benevolent institution in the State; for unless you remove from them every feature of monopoly, you will fall short of the principle of giving “equal rights” to all.

But we presume that there is no one who feels prepared to go to so great a length as this. We ask then upon what ground of consistency can we stop short of it, if this bill is to receive the sanction of this honorable body? For there cannot be a rational doubt, that if you once open the door to this species of legislation, you will be surrounded with similar clamor with reference to every institution which is under the control of the State. And will not your position then be such as will require you to grant all such applications which may be laid before you?

For there is nothing which is peculiarly applicable to the management of this institution, which does not with equal force apply to all the others: the only difference being, that this is in Cincinnati—the others in Columbus. It may be well then that we be upon our guard, lest we be induced inadvertently to misapply a principle, from a misapprehension of the subject. For if the proposition which is now before us was of a general nature, it would not probably meet with the approbation of a single member of this body, or of any sensible man

in the State at large. For all would see that it could be productive of nothing but evil, and that the most unpleasant consequences might flow to the inmates of the institutions which were thus exposed. And it should also be remembered that the credit of establishing and supporting this institution is not due to the State alone, but that much of that credit is due to the tax payers of the township of Cincinnati, on whom has devolved the principal burthen of those expenditures, which have enabled it to accomplish the great object for which it was founded. It was, therefore, with manifest propriety, that the management of the institution was placed in the care of the trustees of the said township of Cincinnati. And the important fact should not be lost sight of, that in consequence of the arrangement which has existed between that township and the State, the affairs of the township have become so interwoven with the institution, that we should beware how we interfere with the arrangements which have heretofore existed. But it may be said that a large number of petitions have been presented in favor of the project, and we are bound to regard their prayer. But should we be led to do that which is manifestly wrong, by petitions which are evidently signed by many without reflection, and by others who are entirely unacquainted with the subject. We are inclined to think, that notwithstanding any such parade of names which may be presented upon a subject which *has not been publicly discussed*, and especially where the subject is one of such vital importance, our duties still remain the same. And we might ask, wherein consists the necessity for that entire revolution in that institution, which this bill proposes to effect? No good reason has yet offered for taking that institution out of the hands of those who have hitherto managed it so honorably to themselves, and so beneficially to all concerned. Why, then, we ask, the necessity for the passage of the bill before us, in which such fearful consequences are to be hazarded?

For that the faculty of the medical college of Ohio, have so managed that institution, as to prove that the confidence of the State was not misplaced when it was committed to their care, its brilliant career of usefulness must have amply demonstrated. What reason then can there be for the adoption of a measure like this, which proposes to take the management of the institution from the care of that faculty which have hitherto controled it so well.

For although there is an apparent plausibility in the fairness of the provisions of the bill, yet it does not require much scrutiny to perceive its real motive, for the gauze which is thrown around it is entirely too flimsy, to conceal the features which lie beneath.

It is therein provided that each of the three faculties shall appoint one person—that the three who are thus appointed, shall compose a board of managers; and that said board shall prescribe rules for the division and government of the institution.

Now this arrangement may all appear very equitable, but let us contemplate for a moment some of its practical operations, that its bearings may be the more clearly presented to our view. Suppose that two of the said faculties should issue a certain order, which the other facul-

ty deemed injurious to the institution and its inmates; but the dissenting faculty must yield its own better judgment—even though based upon many years of hospital experience, for the almighty power of a majority has been wielded against them.

It has been said by the trustees, that in attempting to carry out the plan proposed, they “can anticipate nothing but endless disputes.” And who that will carefully examine this subject, could look for any other than such unpleasant results. Two of those faculties will very naturally be arrayed against the one; but that one will be compelled to submit to such rules as may be prescribed by a majority of the board. So that though the eclectics and steamers do not love each other much, but hate the faculty of the medical college of Ohio more—every one may form his own opinion of the probable effect, of such rules as may be prescribed by a board so singularly constituted. Those rules may all be very proper, but whether they are or not, they will be *legal*, if approved by a majority of the board.

But there is one feature of this bill, which to say the least of it, is extraordinary indeed. The project professes to be all fairness, got up for the express purpose of conferring equal rights, and putting down a “monopoly.” But just contemplate in this light, one of its sage provisions. If under certain contingencies a vacancy shall happen in said board, it is made the duty of the City council to appoint a person to fill such vacancy. But now mark the consistency, for the person who is to be so appointed, “*SHALL NOT BE A PHYSICIAN.*” What, pass a bill for the purpose of destroying a monopoly and extending “equal rights,” while in that same bill you grant privileges to some, which you deny to almost the entire medical profession of the State. It must certainly appear very curious, that such a monopolizing feature should have crept into the bill, as to exclude so large a portion of the people from becoming members of that board of managers. It would seem as though medical men would be as suitable persons to compose the board of managers as others; yet no one who may be appointed by the city council, shall be a physician.

But whoever will take the trouble to examine the bill in its various provisions, and to scrutinize its practical operations, must perceive, that under an insidious guise, it is a monstrous tissue of absurdities. And in whatever light the subject may be viewed, it must be evident that but one continued scene of conflict and confusion, will disgrace the wards of that hospital, unless your prudence may avert the impending calamity. The trustees inform us that the institution is now in a highly flourishing condition, and they have sent up their earnest appeals, beseeching us not to sanction the proposed changes in its medical management. They say that while they can perceive no public good which can be accomplished by such a change, they have the most abundant reason to fear that it would be productive of serious evils. And that those fears are well grounded, will be attested to by every disinterested man who understands the subject.

But it may be proper that we should advert to another feature in this proposed arrangement, as it is a feature which must be productive of

the most disastrous consequences to those unfortunate patients who would be exposed to its influence. The bill authorizes twenty students to follow each faculty at every round which they may choose to make through the wards of the hospital, which would keep those wards in one continued hubbub and uproar. But we shall not so far impose upon the good sense of this Senate as to attempt to prove the impropriety of so hazardous and imprudent practice. For every man, whether in or out of the profession, will perceive at a glance, that the agitation and turmoil which such a course would produce, could not be tolerated upon any principle of regard for the welfare of the sick, for all who have had the misfortune to know anything experimentally of the nature and effects of disease, know that mental quietude is one of the most important ingredients among the means of restoration to health. And so conscious of this fact is the intelligent physician, that he often finds it necessary in private practice, to exclude even the friends and relatives, from the chamber of his prostrated patient. And there is nothing which can well be more detrimental to a poor mortal, at that critical moment when his trembling spirit seems hovering upon the confines of eternity, than to permit a crowd of careless strangers to surround his couch of anguish. Then it is that the sufferer should be left to himself and his God—with none of the careless ones of this world to annoy him—surrounded only by a kind physician and some affectionate friend, to ease his racking pains and soothe his troubled mind. And while we are aware that quietude is not only of importance, but that it is of the utmost importance to the sick, will you permit so dangerous and heartless a measure to receive your sanction? Are we at liberty thus to jeopardize the safety of those who are placed at our mercy, merely to appease the clamor of individuals who either know not what they ask or are reckless of its consequences? Humanity—suffering humanity forbids the thought. And in view of all the fearful consequences, is it to be wondered at, that when the trustees of that institution, some of whom have long had it under their paternal care, see the destroying hand uplifted against it, they should with the overflowing feelings of a kind father's heart, beseechingly implore you to avert the impending blow. No, a manifestation of such feelings on their part, should not be wondered at; for it is but human nature, exhibited in its most lovely form. Those trustees have at all times contended that it would be disastrous to the institution and its inmates, to commit its management to the care of discordant and conflicting counsels: and it need require but little reflection, to convince every impartial mind, that none but the worst of consequences could result from such a procedure. Several years ago, Dr. Drake, and his colleagues of the Cincinnati College, asked admission to the hospital, but the trustees rejected their claim with as much sternness, as they oppose the movement which is now in progress. And we trust that when the nature of that case is properly understood, the trustees will not be charged with partiality or prejudice, in adopting the course which they then pursued.

That distinguished gentleman, who had long been a teacher in the

medical college of Ohio, had seen fit to dissolve that connection which had existed between himself and that institution, and in conjunction with others, had proceeded to organize and put in operation, the medical department of Cincinnati college. These gentlemen then claimed that they ought to be admitted as participators in the medical and surgical management of the hospital; and though that claim might have seemed as a very natural one, it nevertheless was promptly rejected.

And we would here say that those trustees were entitled to the gratitude of that community, for having the firmness to make the decision which they made. But why did they reject the faculty of Cincinnati college? It surely was not from any want of confidence in their medical and surgical skill; for that faculty could boast of men, who occupied a proud and merited eminence before the world, and who held an enviable rank in the profession to which they belonged. It was not therefore because of incompetency that their claim was rejected; but it was because they belonged to a different medical school, and through that well grounded fear entertained by the trustees, that confusion and disorder would be almost inevitable, from the strife and contention which would result from bringing into collision conflicting and rival associations.

And that they took a correct view of this subject, the experience of other cities has most amply shown; for wherever such a practice has been attempted, it has been productive of evil, and only evil. And though it may be reiterated that it is a "monopoly," we think that we have shown, that after the passage of this bill, it will be just as much a monopoly as ever; for the privilege which constitutes a monopoly, is not whether certain privileges may be enjoyed by *one or by three*; but it is, that others are deprived of those privileges.

But after all the ludicrous appeals which have been made to our prejudices, to prove that this institution is a monopoly, and, therefore, that we ought to convert it into another monopoly none the less odious; who does not perceive, that in the government of a public institution, monopoly to some extent, will inevitably exist. It has been correctly said, that a house divided against itself cannot stand; and there is no class of cases to which that principle may be more correctly applied, than to the one which is now under consideration.

And while we admit that the faculty of Cincinnati College would have pursued a similar course of practice to that pursued by the Medical College of Ohio, yet we have no hesitation in saying, that the trustees decided correctly when they excluded that faculty from participating in the management of the hospital. With how much more propriety should we refuse to commit it to the care of three conflicting and rival schools, when we know that the faculties of those schools differ radically from each other, in all their notions of the nature and treatment of disease. Just conceive of three different classes of practitioners attempting to treat their patients in the same ward; and while one will order his patient to be steamed, and the ward to be kept tightly closed up and in a heated state—another orders his patient to be kept

cool, and the ward to be thoroughly ventilated—while the third may take a medium position between the two; and what but the direst evils to those patients could be expected from such a condition of things.

Shall the poor inmates of that institution be subjected to the dangerous experiment to which they would be thus exposed? The idea is too preposterous a one to meet with the approbation of those who have calmly reflected upon the subject. For though such an institution may consist of sundry apartments, yet its utility must, in a great measure, depend upon its being under the management of an undivided head—that one harmonious system of order may encircle them all.

We shall not stop to enumerate all of the numerous evils which might be expected to flow from the passage of this bill, but we assert, without fear of successful contradiction, that a well regulated hospital, and one controlled by discordant councils, must be an utter absurdity in terms. Were you asked to make such change in the management of the Lunatic Asylum which is located here, as would permit the faculty of Starling Medical College, and the physicians of Columbus, to participate equally with Dr. Aul in the attendance of its inmates, the proposition would find no advocates among the members of this honorable body. And though petitions and memorials might be crowded upon you, accompanied even with all the changes which could be rung upon the high sounding terms of “equal rights” and “monopoly,” such petitions would have no influence upon you; and all arguments in favor of granting the object for which they prayed, would be suffered to pass by you as the idle wind. For all those who have visited that institution, are aware that the high credit which it has attained, is attributable, in a great measure, to the discipline and good order for which it is so signally characterized. And even though it is a “state institution” and a “monopoly,” yet this would have no weight upon your minds; for in coming to a conclusion as to what course should be pursued, you would be governed entirely with reference to its inmates. And no one who is acquainted with that institution, would for one moment entertain a doubt, that the patients confined within those walls, would be exposed to serious evils, by subjecting them to the government of conflicting councils.

And will any one pretend to say that the principles which should be applied to the government of that institution, will not be equally applicable to the Hospital and Asylum in the city of Cincinnati? We trust that those who have examined the subject, will be able to see that the two cases are so nearly a parallel, that any rule of government which may be proper for the one, should, with equal propriety be applied to the other.

Who can fail to perceive, that when discord and contention shall have driven concord and harmony from such an institution, the most disastrous influences must be brought to bear upon its inmates, through that constant warring and bickering which will have taken supreme command! The orders and directions which may be issued by one of the contending parties, may be countermanded and prohibited by another, until a scene of the most deplorable confusion must be the in-

vitable result. And it should by no means be lost sight of, that the victims to such an unhappy state of things, would be the unfortunate inmates. And is there any one prepared to say, that this hitherto peaceful institution shall be converted into a mere theatre of strife, where controversialists shall meet to settle the merits of their respective systems of medical practice? If we have due regard to the continued prosperity and welfare of that institution, we will not permit the provisions of this bill ever to be brought to bear upon it; for from the day that we do, its downfall will be almost sure to commence. And while there is good reason to believe that such fearful probabilities are dependent on our action here, it behooves us to be cautious how we settle this delicate question.

Those who have told us so much about our duty in putting down this "monopoly," have not even suggested that their mode of putting it down, might prostrate an institution which has been productive of so much good in community. Neither has the fact so much as been intimated, that all the dire calamities which would be rendered probable, by attempting to carry out their plan, were to be hazarded for the gratification of a few interested individuals. But if this institution is to be divided among these three faculties, the question is, in what manner shall such division be made? There can surely be no one who would for one moment conceive it proper for the steamer, the eclectic, and the one whom they are disposed to denominate the "mineral doctor," each to be officiating at the same time, in the same ward; for all must perceive that a combination of influences would thus be set in operation, from whose destructive tendency few would have the happiness to escape with their lives. But, say they, you may divide the institution into three separate apartments—letting each of the respective faculties take charge of the respective apartments. This may all appear very plausible, when it is talked about; but it may not be amiss to remember, that when it is attempted to be brought to a practical bearing, it can not be done. All those who know anything about the arrangement of such institutions, know that particular rooms are appropriated to particular classes of disease; and that, therefore, in attempting to effect such a division as has been proposed, it would require three times as many rooms for the accommodation of the sick as are now required, and it so happens that those rooms do not exist in the building!

Each faculty would require its lying-in room—each would require its lunatic department—each would require its fever ward—each its surgical ward; and thus you might go on throughout the chapter, when you would find that your wards were not half sufficient to meet the wants of the case. For even under the present arrangement, where each class of cases has but its own appropriate ward, the hospital is full to overflowing, how then would it be possible to carry out such a division of the hospital? The only answer is, that with the present building the whole scheme is utterly impracticable. The trustees of Cincinnati township have informed us by memorial, that it will not be possible to carry any such provisions into effect, unless the buildings are very materially en-

larged. They object, therefore, to the proposition—not only because they believe that it would be detrimental to the institution, but because it would require a very heavy expenditure, which would otherwise be entirely unnecessary.

In the memorial above referred to, they assure us that the hospital cannot be divided as has been proposed, short of expending at least \$15,000 for the enlargement of the buildings! And they further state, that there is no reason to suppose that the money can be raised unless it shall be appropriated from the treasury of the State. And while there is no probability that the legislature will consent to draw upon the treasury for any such appropriation, ought we to persist in devolving duties upon those trustees, which they most positively assure us cannot be carried out without it? It would seem that propriety should admonish us, that we should not enact a statute which involves an impracticability in its execution. And is there any good ground on which so heavy an expenditure would be rendered justifiable on the part of the State, when no conceivable public good is to be accomplished thereby? We think that there is not, but if the enlargement of that hospital shall have been rendered necessary by an act of the General Assembly, it surely ought not to be expected that the necessary expenditures of such enlargement shall be made to fall upon the tax-payers of the township of Cincinnati. For it should be borne in mind, that they are already required to raise a large amount annually to defray the expense of supporting the inmates of the institution! And it would seem proper that we should here advert to a false impression which appears to have been made upon some of the members of this General Assembly; for there are those who have been induced to believe that the revenues of the institution are ample for its annual support! But, from evidence which is in our possession, it appears that such an assertion has no foundation in truth; for we hold a certificate from the clerk of Cincinnati township, in which he states that it required \$11,722.21 of the funds of said township, to meet the deficit which accrued for the year which has just gone by!

And when it is considered, that most of this deficit was for the support of persons who had no legal residence in that township, it would seem that as heavy a burthen already rests upon them, as in reason they should be expected to bear. And yet we are told that this is peculiarly a "state institution," and this is offered as an evidence that the State should not hesitate, when it is asked to exercise its sovereign power upon it!

But suppose that it even were a state institution in such a sense as to be entirely supported by the State, does it therefore follow that we should proceed to lay violent hands upon it, and jeopardize the dearest interests of those for whose welfare it was established? The answer must be emphatically No.

The faculty of the Medical College of Ohio, sustained by the benevolence of the State and the city of Cincinnati, have succeeded in rearing that noble charity into what it now is, when under pretexts which are false and delusive in their nature, we are called upon to

strike a blow which must jeopardize its career of usefulness! But let us, at least, take a momentary view of that institution, before we venture upon a step so imprudent and so rash. And in taking a survey of its internal affairs, we shall find that during the year ending on the 1st of January, 1849, two thousand five hundred and eighty-one patients were admitted into its wards, being an increase of nearly *three hundred* over the preceding year!

This fact alone is a better commentary upon the credit and importance of the institution, than any argument which it would be in our power to advance. And before we determine that this institution shall be sent afloat upon the wide ocean of wild experiment, let us consider that among the patients admitted during the past year, one thousand five hundred and twenty-five were unfortunate strangers, who have thus been cast upon the tender mercies of our people. Will you subject these poor invalids, deprived as they are of the comforts and endearments of friends and home, to the risk of all those untoward influences which will thus be thrown around them! The benevolent spirit of our nature shudders at the idea, and the honor of our noble State forbids the thought. And before we shall consent that this institution may be trifled with, as has been proposed, let us remember that it is a Lunatic Asylum, as well as a Hospital.

It appears that there were admitted, during the past year, *one hundred and twenty* of that miserable class of our fellow men, who of all others are most entitled to the warmest sympathies of the humane and the virtuous—those unfortunate beings whose minds roam wild in chaos, deprived of that noble trait which presents man in the image of his God, and which alone connects him with all that is lovely in the world around him! Such is the institution whose career of usefulness you have been called upon to jeopardize; and will you do it? is the thrillingly interesting question which forces itself upon you.

And though argument without reason, and assertion without truth, have been presented in behalf of this fearful project, yet we trust that that this honorable body will not permit itself to be led astray by interested and designing men, in a matter where such mighty consequences are dependent. Shall a field which is so overlaid with the miseries of man, be made the theatre of an experiment, which must meet with the disapprobation of an impartial world? Are all your benevolent institutions to be held up invitingly to the various quixotisms and follies which may choose to enter them?

For if you grant the request which has been made with reference to this institution, when and where will consistency permit you to stop? You will have opened the fatal door through which ruin must be permitted to stalk, until it shall have prostrated all those noble institutions, which now stand forth as the proud monuments of the benevolence of a generous State!

For you may rest assured, that this will not be the last victim to the cupidity of man, but it will be held up as an argument for subjecting all your other institutions to a similar ordeal. Let us beware, then, of

the action which we may take in this matter, lest we may find ourselves in a position from which it will be difficult to retreat.

Is it not safer to let well enough alone, than to resort to hazardous and doubtful expedients? The highest expectations of the founders and supporters of that institution, have been fully realized; and suffering humanity now calls upon you to hold your hand and not obstruct it in its onward progress.

Fondly trusting that that appeal shall not be made in vain, and impelled by an ardent desire to ward off an evil from the dependent invalid; and believing that the bill in its present shape, should not, on any consideration, be passed, we recommend to strike out all after the enacting clause, and insert what we send to the chair.

All of which is respectfully submitted.

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UPON THE PETITION OF JAMES Y. PINKERTON AND OTHERS.

The Committee on the Judiciary, to whom was referred the petition of James T. Pinkerton and others, trustees of the Methodist Episcopal Church of Mount Eaton, Wayne county, asking for the passage of an act enabling said trustees to make sale and conveyance of certain real estate described in the petition, submit the following

REPORT:

That it appears from the petition, and the documents accompanying it, that in the year 1821, James Galbraith, for a nominal consideration, conveyed to Jacob Orvell and others, then trustees of said church, and their successors in office, a lot of ground in the town of Mount Eaton, in trust, for the erection of a house of worship, for the use of the Methodist Episcopal Church, to be used in accordance with the established discipline of that denomination, with authority on the part of the trustees to mortgage the premises for purposes enumerated in the deed of conveyance. It appears, also, that the Methodist Episcopal Society, subsequently, to the conveyance, built a house of worship on this lot, in accordance with the objects of the grant, which they have since occupied, and which, with the lot, still belong to the society. They are at this time engaged in the erection of another house of worship upon a different site since procured, and they wish for authority to sell the premises in question for the purpose of appropriating the proceeds in aid of their present enterprise.

In the opinion of your committee, it is both unnecessary and improper for the General Assembly to legislate in this or similar cases. Unnecessary for the reason that a Court of Chancery could readily render to the petitioners all the aid in this matter to which they are legally or equitably entitled, and render proceedings in which all the parties in inter-

est could be heard; and, improper because in the judgment of the committee, the General Assembly has no constitutional authority to pass any act such as is prayed for in the petition, and any such act as could be passed would be nugatory and wholly inoperative as against the grantees of these premises or their legal representatives.

Your committee therefore ask to be discharged from the further consideration of the petition.

Respectfully submitted.

REPORTS

OF THE

Select committee appointed to inquire into the manner of the passage of Senate bill, No. 70, of the last session, to fix and apportion the representation of the General Assembly of the State of Ohio.

IN SENATE—March 24, 1849.

Resolved, That a select committee of three be appointed by the Speaker of the Senate to inquire into the manner of the passage of of Senate bill, No. 70, of the last session, and also to inquire into the fact whether or not corrupt and fraudulent alterations of the journals of the same session of the House and Senate were made, and that said committee be instructed to inquire into the conduct of the fifteen Senators who left the Senate Chamber, and refused to comply with their oaths and perform their duties as Senators, and that said committee have leave to send for persons and papers, and with the aid of a judicial officer, to administer oaths, and to report the facts to the Senate as soon as practicable.

The select committee which was appointed in pursuance of a resolution passed on the 14th of March, inst., for the purpose of investigating the passage of the apportionment law of last session, have given to the subject such attention as their other duties and the shortness of the time would permit, and the majority now beg leave to submit the following

REPORT.

And we would remark in the outset, that as the subject is one which has been a source of much agitation among a portion of the people of the State, we have endeavored to bestow upon it that calm and deliberate attention which its importance might seem to demand. We admit that we feel somewhat embarrassed in entering upon this investigation at this late period of the session; for, after having been in session for more than three months and a half, it appears as rather an awkward affair, to be investigating the validity of that law upon which all our legislation must rest for its constitutional efficacy!

But as it has been made our duty, we shall proceed to call the attention of the Senate to some of those matters which have been made

points of dispute connected with the passage of that law about which so much has been said.

It appears that on the 12th day of January, 1848, a bill was introduced into the Senate and read the first time, "to fix and apportion the General Assembly of the State of Ohio." But we do not deem it necessary that we should trace that bill in the various stages of its progress through the Senate, for we are not aware that any one has undertaken to dispute but it regularly and properly passed that body, as appears by page 340 of the Senate journal.

And it must be apparent to all who know any thing of legislative proceedings, that after the Senate had taken that vote on the passage of the bill, that body could have had no farther action upon it, if it had not been amended in the House of Representatives. It will also be admitted that it would then have been the duty of the clerk of the Senate to take possession of the bill; to have caused it to be duly enrolled, and delivered to the Speakers for their signatures; while no one would have put in circulation the extraordinary tale that it had been "stolen from the table of the clerk of the Senate!" For it would then have been clearly apparent to all that the course which had been pursued with reference to that bill, was the same as is pursued with all others which have passed the two branches of the General Assembly.

And it must be evident, that when a bill has passed one House, and amendments have been made to it in the other, its condition becomes the same after these amendments are removed as if it had not been amended at all.

We have said, that if the apportionment bill had not been amended in the House of Representatives it would have been at the disposal of the clerk from the moment that it had passed that House. But it was amended during its progress through the House, and by reference to House journal, page 569, it will be seen that it passed that body on the 10th day of February, by a recorded vote of "ayes and nocs." It will be perceived, then, that the bill had passed both branches in the *regular and usual* manner, and that nothing remained to be done but to dispose of the pending amendments; which disposition could be made either by the Senate agreeing or by the House receding. And by reference to pages 522-3 of the Senate journal, it will be seen that a portion of the amendments were agreed to, and that the others were disagreed to by that body. And in consequence of that disagreement of the Senate, as some of the amendments were yet undisposed of, the bill was again returned to the House, when a motion was made to reconsider the vote on its passage, and that motion was laid on the table.

But we have now come to one of those points in the history of that law which has been a subject of much dispute, and has no doubt led to some degree of misapprehension. For the assertion has been made, and no efforts have been spared to prove it to be true, that the House did reconsider its vote on the passage of that bill; and it is contended that as they did not afterwards take a vote on its passage, it was never passed, and therefore that it is not a law.

It must be evident, then, that if this objection be true, it is a matter of grave importance ; while it must be equally evident that if it be not true the public weal demands an exposition of its falsity. We propose, therefore, calmly to investigate the matter ; and we feel confident that before we have done with it we shall demonstrate most conclusively that the House did not reconsider that vote, in any such sense as could be binding upon themselves or the country. And though we have direct testimony to prove this point, yet we can incontrovertibly establish the fact from the record itself, and that too by democratic testimony, which was given at the time, though given upon another subject, and for another purpose. We grant that it is true, that *after the Senate had agreed to a portion of the amendments, and before the bill was returned to the House*, a motion to reconsider the vote on its passage was agreed to by the House. But at the same time, it is equally true that soon after that motion had been agreed to, it was discovered to have been “ *not in order*,” and was by “ common consent ” treated as an “ informal ” proceeding—which, as every Senator knows, is the same as though nothing had taken place on the subject. It will not, however, be contended by any one who is aware of the facts, that such a reconsideration could have been possessed of the slightest validity, even if the proceedings of the House had not been passed by as “ informal.”

For a vote to reconsider could not have been taken without violating a well established principle of parliamentary law, unless the paper on which that vote had been given was before the House at the time of the proposed reconsideration. Such was not the case in the present instance, but the bill on which that reconsideration is said to have been taken, was before the other branch of the Legislature. But there was still another reason why the House could not have reconsidered its vote on the passage of that bill ; for some of the amendments had been agreed to by the Senate, and therefore the House could not have reconsidered its vote on the passage of the bill till after the Senate had reconsidered those votes by which the amendments had been agreed to. And as the Senate had not yet performed that important prerequisite, it must be evident that if the House had even persisted in its reconsideration, such persistence could have amounted to but the merest nonsense. For, as they had no power to give such a vote, the vote would have been possessed of no validity. But it has been asserted that the published journal does not agree in this respect with the minutes which were made by the clerk at the time, and it has therefore been gravely charged, that the journal was deliberately and maliciously falsified ! But that any one should come to such a conclusion from such a premise, must evince an obtuseness of intellect or want of legislative experience, which would render the authority utterly worthless. For every experienced legislator is well aware that amid the hurry and bustle which sometimes exist in legislation, mistakes are liable to occur, and that should such proceeding be discovered to have been out of order, at any time before the regular journal is made up, they may by “ common consent ” be passed by as “ informal,” and that in such case the proceeding does not go upon

the regular journal, even though it may have been entered among the original minutes which had been made by the clerk at the time. So that notwithstanding all which may have been said about this alledged falsification of the journal, we are entirely unable to perceive that there was any sufficient ground upon which to base a charge like that. For all that there was about it seems to have been simply this—that the House required their clerk to make up the journal in such a form as to exhibit their *real proceedings* in the case. There was nothing remarkable in this, and it does not appear that a single voice was raised against it at the time, but the whole transaction seems to have been deemed as right and proper by those who composed that branch of the General Assembly. And surely no one will undertake to assert that they had not the right to determine this matter for themselves, and to dispose of it in such a manner as might seem most appropriate to them.

And we cannot for one moment believe that if so great an outrage as a falsification of the journal had really been committed, it would have escaped the attention of all those democrats who were members of that House at the time that wrong is said to have been perpetrated. We have said that a motion to reconsider was laid on the table, and this appears to have taken place on Saturday, the 12th day of February. And on Monday, the 14th day of the same month, that motion was taken from the table, when, on leave being asked to *withdraw the motion*, that leave was granted by a recorded vote of “ayes and noes.” Now, must it not appear extremely irregular that if the House had reconsidered that vote on the 12th, the *motion on which that reconsideration was had should be withdrawn on the 14th!* But if the members of that House deemed that they had actually reconsidered that vote two days before, why did not those who opposed the withdrawal of the motion, raise a point of order on the question to withdraw? It must evidently have been for the plain and simple reason that every member knew the vote had not been reconsidered, except in the manner as heretofore specified. And as an additional evidence that every member of that House knew that no actual reconsideration of that vote had taken place, we would refer to a paper which was signed by Emery D. Potter, and twenty-eight of his political brethren, wherein they protest against the *final action* of the House in reference to that apportionment bill.

That paper was drawn up and signed on the 18th day of February, while those proceedings were all fresh before them, and though they present all the possible objections which their ingenuity could conjure up, against the *final action* which the House took upon that bill, yet they do not intimate that any reconsideration of the vote on its passage had taken place, but on the contrary, they distinctly state that “*no longer ago than Saturday last*” a motion to reconsider was decided to be “NOT IN ORDER!” And it should be borne in mind that the “Saturday last” to which they referred was the day on which it has since been pretended that that reconsideration should have taken place! It must be evident, then, that they knew that the proceedings connected with that reconsideration had been rendered nugatory by the subse-

quent action of the House, hence they do not attempt to make a charge which every member would know to be false.

But if a bona fide reconsideration had taken place, can any one believe that those gentlemen would have placed their testimony upon the record, to prove that such reconsideration was *decided to be* "not in order." It would seem to require too great a stretch of credulity, for any man of sense to believe such an utter absurdity. For if a reconsideration had really taken place, it would have been one of the strongest points which could have been made against the validity of the passage of the apportionment bill. And there is no one who knows anything of the shrewdness and sagacity of those protestants, who will for one moment entertain a belief so preposterous, as to suppose that they would have been so weak and silly as to have yielded a point like that.

Does it not then appear most extraordinary, that an attempt should have been made to hold up an "informal" proceeding as a legislative transaction; when *twenty nine* democratic members, who participated in and witnessed the whole affair, come forward and testify that it *was decided to be* "not in order;" and was therefore of no account! From these various considerations, it must be evident to every impartial mind, that the vote on the passage of that bill was not reconsidered, at least in any legislative or binding sense; and that the whole story was a mere *after thought*, upon which politicians found it convenient to seize; gotten up, perhaps, for the accomplishment of "ulterior" purposes!

And though we think that we have most clearly demonstrated, that the reconsideration which was had was afterwards declared "informal," and was therefore the same as though nothing had been done upon the subject: yet the testimony of E. F. Drake and Wm. B. Fairchilds is sufficient to remove the last shadow of doubt upon this point. And we trust that the point will be conceded, that any reconsideration which may have taken place on that vote, was possessed of no validity, and that it was so understood by those who were members of the House at the time.

But should the mass of testimony which we have presented be deemed by any one as insufficient to prove that that vote was not reconsidered, let it be borne in mind, that the House could not have reconsidered the vote on the passage of that bill, even if it would; for that vote had been placed beyond the reach of the House, by the subsequent action of the Senate. And in view of all that we have stated, we think that we have sufficiently demonstrated;—that the difference between the primitive minutes and the regular Journals, did not arise from a falsification of that Journal; but that the Journal was made up in such a manner as to correspond with the will and intention of the House at the time.

There is not probably any one but will readily admit, that a legislative body possesses the right to direct the arrangement of its Journal, so as to cause it to present a truthful exhibition of its real transactions. And how often has it been the case during the present session, that business of various kinds has been transacted, at such times as noth-

ing could have been in order, unless it pertained to "a call of the Senate." But such business was presented and acted upon by "common consent," and it was understood to be the duty of the clerk, so to make up the Journal as to cause those proceedings to appear, at that time in the business of the day when *they did not occur*, viz; either before or after the "call of the Senate." And is there any one who will hereafter attempt to make it appear, that the clerk was guilty of falsifying the Journal in that respect! We presume that there is not: and yet there would be the same justice and propriety in making such a charge, as there would be in the case which we have been considering. Having now sufficiently disposed of that reconsideration and the alleged falsification of the Journal, we return again to the legislative progress of the bill; and we find that on Monday the 14th day of February, the House proceeded to take action on those amendments to which the Senate had not agreed; when it will be seen, by reference to page 605 of the House Journal, that they receded from two of their amendments, and insisted upon the rest.

And it was in this shape, and while a portion of the amendments were yet pending, that the bill was again returned to the Senate, when before any action had been taken on the amendments, fifteen Senators withdrew from the Senate chamber, thereby compelling the Senate to adjourn for want of a quorum! The Senate met and was called to order at the usual hour on the following morning, but the absentees still refusing to return to their seats, the Senate again adjourned till the following day.

And thus did matters continue to go on from day to day, till Friday the 18th day of February, when the House receded from "all its amendments to which the Senate had not agreed," thereby leaving no question upon which either branch had any further power to act. All then which remained to be done with reference to that bill, was that it be enrolled by the clerk and signed by the speakers: and no one will argue that it required any motion or vote of either branch, to enable those officers to discharge the duties which were incumbent upon them.

We now proceed to notice the objections which have been urged against some of the proceedings which were had upon that bill.

And we conceive that the weakest pretext which has yet been set up, is that which asserts that the House had no right to recede from its amendments, while the bill was before the other branch of the legislature. Though such an argument might serve to mislead those who are unacquainted with parliamentary proceedings; but men of legislative experience, must regard it as unsound in theory, and will know that it is based upon a position which is untrue in practice.

For every parliamentarian will admit that when a bill has passed both branches of the General Assembly, and there are amendments pending, which have been voted upon by each, either of those branches may recede from the votes which it had given on those amendments, without any regard to the locality of the bill. But before we proceed to argue this point, and as an illustration that such a practice is not unusual, we would call the attention of the Senate to another

case of the kind, which occurred during the last session of the General Assembly.

That was also a case in which the House receded from its votes on amendments, while the bill to which those amendments were attached was before the Senate. It was a bill to amend the "act to create the office of Attorney General and prescribe his duties;" which, after having passed the House, subsequently passed the Senate with amendments. And by reference to House Journal, page 622, it will be seen that the House disagreed to the first and agreed to the second of the said Senate amendments. And by referring to Senate Journal, page 628, it will be seen that the Senate insisted on its amendment, to which the House had disagreed. And by referring to page 660 of the House Journal, it will be seen that the House insisted on its disagreement, to the Senate amendment. The bill was again returned to the Senate; and by reference to page 646 of the Senate Journal, it will be seen that that body asked a committee of conference, relative to the disagreement which existed between the two houses, on the amendments to said House bill No. 267.

And by reference to page 675 of the House Journal, it will be seen that *immediately* after the house had been notified of the request of the Senate, Mr. Emery D. Potter moved that the House "*recede*" from its disagreement to Senate amendments to House bill No. 267, which motion was agreed to by the House, *without a division*. So that while the Senate was waiting for the House to comply with its request, for a committee of conference, a message was received by that body, informing them that the House *had receded* from its disagreement to the Senate amendments! And as all points of difference between the two houses were thereby removed; the bill was at once transformed into a law, without any further action upon it. Here then was a case, which was directly to the point which we have under consideration; a case in which the House receded from its votes on amendments to a bill, while that bill was in the other branch of the legislature.

And what is not a little remarkable in this case, is that the motion to recede was made by a democratic leader in that House; one who had formerly represented the democracy in the Congress of the nation, and who is again a member elect, to fill that important station. And what is perhaps still more remarkable, is that this was the same Mr. Potter, who but a few days before had united with twenty eight of his political brethren, in protesting against the right of the House to do that same thing, with reference to the apportionment bill!! Yet notwithstanding all this, he made the motion, and it was *unanimously* carried! And though the course pursued by these gentlemen, must appear strangely inconsistent; yet as all knew that their action was based upon a correct parliamentary principle, it did not meet with one opposing voice. It is upon that principle, that points of difference between the two houses, are acted upon through the medium of a committee of conference. And the fact must be too notorious to require an argument in its proof, that during the action which may be had in the two houses, consequent upon the deliberation of such a committee, it is not usual to transfer a bill to which amendments are

attached, from one of those houses to the other: But that each house may act upon and dispose of the pending amendments, whether the bill is before it or not. And though this position is too clear to need any further illustration, to satisfy every one who has any knowledge of parliamentary practice; yet we are well aware that it is one of those intricate subjects, which it is very difficult to make plain and easy to be comprehended, by those who have no experience in legislative proceedings. But every legislator knows that it is a stubborn fact which cannot be gainsayed, that after a committee of conference have deliberated upon points of difference between the two houses, one of those houses may be acting upon the report of its branch of the committee, at the same moment while the other branch is acting upon the report of its branch of that committee. And though the bill on which they are acting, may not have been transferred from one house to the other during this whole proceeding; yet the moment that those reports are agreed to, that bill becomes a law without any further action upon it. It will be evident that we present these cases, merely to illustrate the principle on which a legislative body may recede from its votes on amendments, without the necessity of being in possession of the bill, to which those amendments are appended.

But we now proceed to examine another of those objections, which have been urged against the proceedings which were had on the apportionment bill.

It has been asserted that the House had no right to recede from its amendments to that bill, because the bill was laid on the table of the Senate, by the adjournment of that body! It would indeed have seemed scarcely possible, that any one should seriously have raised an objection, so impotent and foolish. We think that we have already clearly demonstrated; that a legislative body may recede from its votes on amendments, when the bill is before the co-ordinate branch of the General Assembly; and therefore a very little reflection must show that it is entirely immaterial what the position of that bill may be. If it had been laid on the table, either by adjournment or by a motion, while the amendments were pending, it must be evident that as soon as the other branch had so receded from its votes, as to dispose of those amendments, that the bill is at once removed "from the table," for it is then passed into a law, and a law cannot be laid on the table.

That is, the only question which held it to "the table," was the pending amendments, and when those are no longer pending, that bill is just as fully set free from the technicality of a motion as any other which has passed the two branches of the legislature. As illustrative of this proceeding, we will refer the Senate to a case in point; which may be found on page 458, of the Journal of the last House of Representatives.

That House requested a committee of conference on House bill No. 86; and without a motion to make any temporary disposal of that bill, the House adjourned.

It may be said, then, that the bill went on "the table," by the adjournment of the House. But you will nowhere find that any motion

was ever made to take that bill from the table, though you will find that a committee of conference twice had that bill under discussion, and that the two houses voted on the reports of that committee, until they had finally succeeded in disposing of all the amendments. It was then the duty of the clerk of the House to take possession of that bill *wherever he might find it*, and to cause it to be enrolled, that it might receive the signatures of the Speakers.

But another objection which has been urged against the action of the House in receding from its amendments is, that the House did not know but the Senate had agreed to those amendments! This appears to us as the most extraordinary position which could have been assumed by rational and thinking men. Did not the House of Representatives well know that it was for the sole purpose of preventing the Senate from agreeing to those amendments that fifteen Senators had vacated their seats, and retired from the Senate chamber? Was not every man, whether in or out of the Legislature, fully aware that such a state of facts existed at that time? And can it amount to any thing short of an insult to the common sense of community, to be told that the House did not know but the Senate had agreed to those amendments?

The story is entirely too shallow to be entitled to the smallest degree of credence, for nothing could have been more clearly evident to that House than that the Senate had not agreed to those amendments. But so far as the action of the House was concerned it was of no consequence as to whether the Senate had agreed to the amendments or not, for the House only receded from "*all its amendments to which the Senate had not agreed.*" So that if the Senate had agreed to the amendments, then it must be evident that the House had receded from nothing, and in either case the bill was a law. But it has been complained that as the Senate was without a quorum, it had no right to receive information from the House, so as to know that the House had receded from its amendments. But when all the circumstances are taken into consideration, an objection of such a nature must appear to be strange indeed. Let us, for a moment, direct our attention to the consideration of things which existed at that time. And while we would not undertake to charge that those Senators who, by leaving their seats left the Senate without a quorum, were governed by any other than what appeared to them to be honorable and patriotic motives, yet we conceive that they were misguided in adopting the course which they felt it their duty to pursue. But however pure may have been the intention of those gentlemen, the effect of their course would have been equally disastrous as if the motives which had governed them were bad. And under all these circumstances, it might well be taken as a question for serious practical consideration, as to whether for the avoidance of an unimportant formality, the plainest injunctions of the constitution should be thwarted and disregarded. For the 2d section of the 1st article of that instrument provides, that "within one year after the first meeting of the General Assembly, and within every subsequent term of four years," an enumeration of the white male inhabitants shall be made, and that "the number of Represen-

tatives SHALL, *at the several periods of making such enumeration*, be fixed by the Legislature, and apportioned among the several counties." That enumeration had been made in the manner pointed out by law, and the time had arrived when the constitution made it the *imperative* duty of the General Assembly to apportion the State for Senators and Representatives. A bill had passed both houses, which fixed their number and "apportioned them among the several counties," and while that bill was suspended by a disagreement between the two houses, in consequence of amendments which had been made by the House which had last passed it, the constitutional quorum of the Senate had been broken up by a *minority* of its members retiring from their seats, for the purpose of defeating that important measure.

It must be evident to all who will be guided by the dictates of sober reason, that if an apportionment had not been made at the last session, it could not have been done by any succeeding Legislature, for the constitutional period would have expired which permits of legislation of that description. For that instrument declares that an apportionment shall be made *within every four years*, and as the "four years" would then have been passed by, it must be evident that the act could not have been performed! The State then would have been literally without a government, and society resolved into its original elements! Such was the prospective scene which was presented for the contemplation of the General Assembly!

And it was under circumstances like these that the question might well have been asked, whether the best interests of two millions of freemen should be jeopardized for a mere technical formality.

It has been said that the bill having been amended in the House, was virtually a new bill when it was returned to the Senate. But without stopping to combat a position so absurd, we would barely remark, that the Senate had already disagreed to each one of those amendments from which the House receded. So that after those amendments were removed by the House receding, the bill was precisely in that shape which had *received the recorded approbation of the Senate*. And some slight departure from mere technical formality may have been necessary to preserve the law making power of the State, yet it must appear strange indeed when those who created the necessity for such departure come forward to complain that such departure has taken place.

But there is still another objection which has been urged against the validity of the apportionment law; which is, that it was signed by the Speaker of the Senate when that body was without a quorum. It has been asserted that the Speaker had no right to sign that bill under the circumstances, and much has been said in support of that assertion, yet we trust that a little examination will demonstrate that this is as futile as we have shown all the other objections to be. And we are not a little surprised that any man who has ever read the constitution of Ohio should suppose that a Speaker of one of the branches of the General Assembly could be so hampered by a mere contingency as to prevent him from discharging that duty which he was constitutionally bound to perform. If we turn our attention to section 17 of the first

article of the constitution, we will read that "every bill having passed both houses *shall be signed* by the Speakers of their respective houses."

That instrument no where requires that the Speaker shall sign a bill *in* the house of which he is Speaker, but if he signs the bill he has done all which the constitution requires at his hands. It will be perceived that this duty is imperative upon the Speaker, and there cannot exist any rule or contingency which can in the least exonerate him from its performance, for no rule can possess a power superior to the constitution, and that instrument makes this duty incumbent upon him. But it has been contended that as the 14th joint rule declares that bills shall be signed by the Speakers *in* their respective houses, the Speaker of the Senate had no right to sign the apportionment law unless a quorum of the Senate had been present at the time! But that seems to us as most strange and extraordinary logic, if logic it can be called. And we apprehend that it will require but a little reflection to convince every sensible man of the untenable absurdity of such a position. For, according to the terms of the constitution, the Speaker *shall sign* all bills which have passed both branches of the General Assembly; yet by the construction which some attempt to put upon that 14th rule, he might be prevented from discharging that duty which the constitution declares he *SHALL* perform. The question then would simply be, shall a rule be permitted to override the constitution? Can a rule possess any binding force upon the Speaker when its execution involves a consequence like that? We think not, and we believe, therefore, that all the arguments which have been made against the time and place of signing the apportionment law must fall to the ground as unsound and worthless. For it cannot even be reasonably doubted that a Speaker might be required to sign a bill after the Legislature had adjourned *sine die*, if he had neglected to perform that duty before. There can be no one who will look at this subject coolly and dispassionately who will not feel bound to admit that, as the bill had passed both houses, it was the bounden duty of the Speakers to sign it, and that if *by the act of a portion of the Senators* the Speaker found it necessary to give a rule the go by, in order to save the constitution, the fault in that case is not attachable to the Speaker. And though from the nature and necessity of the case, some slight informalities might have occurred, yet from a careful investigation of the whole subject, it appears to us to be most clearly demonstrable that all those forms were regarded and adhered to which were necessary to give to that bill the full force and validity of any other constitutional enactment. For, from all the testimony which we have taken during this investigation, it most clearly appears that no requisite of the constitution was disregarded in its passage.

Your committee therefore believe, that as the apportionment law under which this Legislature was elected received all the constitutional sanctions which were necessary to give it the force and validity of law, we have no more right to treat that law as a nullity, than we have any other enactment which may be found upon our statute book. And not only was every constitutional requisition most fully complied with, but no legislative action was had upon it during its progress and

passage but what was strictly consistent with the correct principles of parliamentary law, as we have endeavored to illustrate in the course of this report.

And though that law has been fiercely assailed by its opponents, yet it has been recognized by the people as an authoritative statute, and under it they have sent Senators and Representatives to the capitol, who, for more than three months, have been engaged in the enactment of laws. And though many of those enactments are intimately blended with the welfare of our common constituents, yet if that law under which we were elected is a nullity, then has our legislation not only been useless, but vastly worse than useless. In conclusion, then, we beg leave to say, that we can never subscribe to a doctrine so unsound in principle, nor place ourselves in a position which must lead to such disastrous results. For it would seem to us but little short of the most barefaced audacity, if after having acted as Senators and Representatives for so long a period, we should now turn round and say to those who had supposed themselves to be our constituents, "we have humbugged you by going through the mockery of passing laws and electing officers, but this was all to please your fancy, for those laws must be worthless and those officers will be powerless, as we have had no more constitutional right to do those things than another hundred and eight men whom you might choose to send to the capitol.

Are we prepared to place ourselves and our constituents in a dilemma like this?

We have already stated that we do not entertain the slightest doubt of the validity of that law, and we cannot perceive how any one who has been legislating under it during this whole session could seek to impair and destroy the validity of his legislation, by assuming an opposite position.

All which is respectfully submitted.

JOHN F. BEAVER,
PINKNEY LEWIS.

MINORITY REPORT

OF THE

Select Committee appointed to inquire into the manner of the passage of Senate Bill No. 70 of the last Session, to fix and apportion the representation of the General Assembly of the State of Ohio.

IN SENATE—March 24, 1849.

The minority of the select committee which was appointed to investigate the manner of the passage of the so-called Apportionment Bill of the last General Assembly, have had the same under consideration, and now beg leave to

REPORT:

That the lateness of the day at which the committee was appointed, and the anxiety of many members to return to their families, have induced your committee to circumscribe their investigation as far as they could consistently with what they deemed their duty to their constituents, and the people of Ohio. But they believe the facts set forth in this report are sufficient to enable every candid mind to form a correct opinion upon the subject.

The attention of your committee was first directed to the proceedings of each branch of the General Assembly, upon "Senate Bill No. 70," of the last session, as they appear upon the Journals; and in so doing, they have, in every instance, compared the proceedings and the state of the question, as there decided, with the rules of each branch and the requirements of parliamentary law.

This is done that the mind may more readily comprehend the points at issue, and the necessity of a strict adherence to the constitutional rules for a protection of the rights of the people.

In the 46th volume of General Laws of the State of Ohio, is found what purports to be "an act to fix and apportion the representation of the General Assembly of the State of Ohio." Assuming to prescribe who shall exercise the law making power of the State, and represent its legislative sovereignty over life, liberty, property, and whatsoever constitutes the interest, duty and welfare of a great and free State, this act exceeds all other exercise of legislative power, immeasurably, in importance. Appearing among the laws of the State, and bearing certain signs of authenticity, it has in some measure been acted upon; but inquiry discloses the fact, that this act never received the constitutional sanctions essential to make it a law of Ohio. But that, on

the contrary, it has found its place upon the statute book through means in their tendency most dangerous to public morals and private right, and destructive to public liberty—means which, blending fraud with the characteristics of the abhorrent crimes of treason and usurpation, demand exposure and future penalty.

Upon the 46th General Assembly of the State of Ohio, begun and held at the city of Columbus, on the 6th day of December, 1847, the constitutional duty devolved to fix and apportion the representation under the first article, and in the manner prescribed by that instrument.

From the Journal of the Senate it appears, that at the morning session of that body, on Wednesday, the 12th day of January, 1848, a bill was reported from the joint select committee appointed on that subject to fix and apportion the representation of the State of Ohio, (Senate bill No. 70,) which was read the first time. *Senate Journal*, 203. Proceedings were afterwards had thereon until Friday, the 28th of January, when the bill, having been amended in sundry particulars, was read a third time and passed by that body. *Senate Journal*, 339, 340.

On Saturday, the 29th of January, it was sent with the usual message to the House of Representatives. Proceedings were had upon it there during the next ten days, until Thursday, the 10th of February, by which time it had received nineteen amendments, changing essential features of the bill as it had passed the Senate. With these essential changes in character and provisions, it passed the House of Representatives and went back to the Senate, being identical only in number and title as it originally passed that body, but in other respects a new bill. *House Journal*, 569.

On Friday, the 11th of February, the bill and amendments being sent with a message communicating the action of the House to the Senate, that body disagreed to the first twelve amendments and agreed to the remaining seven. Thus, for the third time, a new form was given to the bill. It now differed in seven particulars from the bill passed by the Senate on the 28th of January, and in twelve particulars from the bill passed by the House on the 10th of February. Information of this was transmitted, with the bill, to the House of Representatives; and on the next day, a message was sent to that body requesting a return of the bill to the Senate. This request being complied with, the Senate, after reconsideration, on Monday, the 14th of February, again disagreed to the first twelve amendments of the House, and agreed, as before, to the remaining seven, sending the bill back with this information to the House. The House then receded from its 1st and 2nd amendments. *H. J.* 605. Being transmitted with notice of this action to the Senate, while there under consideration, on a call of its members, pending a motion to recede from disagreement to the third House amendment, the Senate was found to be without a constitutional quorum to do business. The democratic members, failing in all other means to prevent what they deemed to be, by the passage of this bill, a violation of the constitution, which they had bound themselves under oath to support, had departed from the Sen-

ate chamber. The Senate adjourned ; the bill being, according to the Journal, in the possession and under the consideration of that body.

Pausing at this crisis, let the state of the bill be examined.

The bill that passed the Senate on the 28th of January, had not been agreed to by the House. It was changed in nineteen particulars, and thus differing from what had been passed by the Senate, the House undertook, in a different manner, to fix and apportion the State representation.

The Senate disagreed to the representation fixed and apportioned by the House in twelve particulars, agreeing only to seven of the nineteen changes from its own previous mode. The House then receded from its first and second points of difference, but insist upon the remaining ten.

Down to this point, then, there has been no concurrent passage of a law by the two legislative branches. Each branch has endeavored, in its own mode, to fix and apportion the representation. Each has passed a law—not the same law, but (except in number and title,) another and different. The Senate's power to pass any law, or do any act, save to meet and adjourn, is at this point suspended by the constitutional provision requiring two-thirds to do business. All future action in the absence of that number, by the Senate as an organized legislative body, is rendered, through want of a quorum, absolutely void. A less number than two-thirds of the members, sitting in the Senate chamber, could therefore have no more power to pass or agree to a law, than the same number of individuals in a market house or tavern, for they were clothed by the constitution with no law-making power, but were specifically disabled by the constitutional provision requiring two-thirds to constitute a quorum to do business.

From this period until Saturday the 19th day of February, it is shown by their Journal that the Senate remained without a quorum.

On Friday, the 18th of February, the following resolution was adopted by the House of Representatives :

“Resolved, That, as touching the amendments of the House of Representatives to Senate bill No. 70, to fix and apportion the representation of the NEXT General Assembly of the State of Ohio, the House recedes from all its amendments to which the Senate has not agreed, and that the Senate be informed thereof forthwith.” *H. Jour.* 627.

On the same day, the Senate Journal, showing the absence of a constitutional quorum, and consequent incapacity of that body to do any business, states :

“The following message was received from the House of Representatives, and read at the clerk's desk by the Sergeant-at-Arms of that body :

“Message from the House of Representatives.

“*Mr. Speaker:*

“The House has receded from all its amendments heretofore insisted upon to bill, S. No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio.”

On the same February, 18th, 1848, the act appearing in the printed volume of laws bears date, with the signature of Joseph S. Hawkins, Speaker of the House of Representatives, and Charles B. Goddard, Speaker of the Senate.

The Journal of the Senate further discloses a message from the House, on Saturday the 19th, that the Speaker of the House has signed the following enrolled bills, &c., among which is Senate bill No. 70, "to fix and apportion the representation of the General Assembly of the State of Ohio," followed by this entry: "*Said enrolled bills were severally signed by the Speaker of the Senate ON YESTERDAY.*" Sen. Jour. 595.

It thus appears by these entries, from the time when senatorial action was suspended, on the 14th of February, for want of a quorum, while the bill was under consideration, no action was ever had by that body. The bill had not then passed, but was before that body for consideration. There was never any final action in either House upon the bill as it is found upon the statute book!

The validity of these proceedings, as they thus appear upon the statute book and legislative journals, and the nature and quality of the official actions thus disclosed require now to be considered.

The law-making power is the highest attribute of sovereignty, and is delegated through the constitution, by the people of this State, to a General Assembly, consisting of a Senate and House of Representatives, by whom this legislative authority is to be exercised in manner and for the purposes prescribed. The constitution declares that every bill, *before it can become a law, must have been passed by both houses; and, having passed both houses, it shall be signed by the Speakers of the respective houses.* Art. I. Sec. 17 Ohio Constitution.

A bill to fix and apportion the representation of the General Assembly of Ohio, passed the Senate on the 28th day of January. The act appearing on the statute book is not that bill, but differs from it in seven particulars.

The House of Representatives passed a bill to fix and apportion the representation of the General Assembly of the State of Ohio, on the 10th day of February. This was not the bill passed by the Senate, but differed in nineteen particulars. It was not the bill, signed by Speaker Goddard, but differed from that in twelve particulars. The Senate passed but one bill to fix and apportion the representation, and that was on the 28th of January. The House passed but one bill, and that was on the 10th of February. The act, signed by Speaker Goddard, appearing in the statute book, agrees with neither. That act, therefore, never was passed by both bodies, nor by either.

Validity is sought to be given to this act by *construction*, under pretence that the House resolution of the 18th of February, was equivalent to passage of the bill with the amendments agreed to by the Senate, and without the amendments from which the House receded. Nothing more dangerous to free government can be conceived of than a constructive passage of legislative acts. The General Assembly is a specific body, having certain constitutional duties to perform in an express and specific manner. Judicial construction may be given to

the meaning and effect of express legislative acts when passed; but to pass them by construction, is to open wide the door and hold out a premium for treason and usurpation. This practice would soon lead to the utter overthrow of popular rights and free government. Such construction is not only without warrant or precedent, but is against the general sense and opinion of mankind.

But even were resort to construction admissible, it cannot go to the extent required. Senate bill No. 70, as it passed the Senate, was "to fix and apportion the representation of the General Assembly of Ohio." If passed, its operation would, under constitutional limit, extend to four years, and until after the next enumeration. But the resolution passed by the House was "touching" a bill to fix and apportion the representation of the *next* General Assembly of Ohio, and could, therefore, extend only to the then ensuing year. At the termination of the "next General Assembly," the operation of the act, thus limited to it by express words of the resolution, must cease, and the apportionment for the remaining three years would remain unfixed. So that even upon the doctrine of construction, the question is resolved to a dilemma. If the resolution is to be taken as an expression of assent, equivalent to the passage of a bill, by the very terms of the resolution and its express words, that assent is limited to the "next General Assembly," and cannot go beyond it. If the resolution is not equivalent to assent, then neither expressly nor by construction was the act, signed by Speaker Goddard, passed by the House of Representatives.

This doctrine of construction is not only without warrant and precedent, but is opposed by the highest authority. The manual of parliamentary law, collated and digested by Mr. Jefferson, not only forms the rule of congressional proceedings, but of all legislative bodies in this country, and was also, by express joint rule, the law of the Ohio Assembly. Sec. XLV. Treating of amendments between the houses, (Sec. XLV.) it is laid down, that as to the amending House, the amendment with which they passed the bill is part of its text—IT IS THE ONLY TEXT THEY HAVE AGREED TO. Either house may recede from its amendments and agree to the bill, or recede from its disagreement and agree to the same absolutely, or with an amendment. For here the disagreement and receding destroy one another, and the subject stands as before the disagreement. *Elsynge*, 23, 27. 9 Grey 476.

Applying these authorities to the case, and it stands thus: The nineteen amendments of the House were, by construction, as well as in fact, incorporated into the bill, formed its text, and the bill, thus amended, was the only text agreed to by the House. To those amendments the Senate might agree or disagree. The Senate having disagreed to twelve, the House might afterwards, when the bill came before it, recede, which would leave the bill to be acted upon as it then stood; but such recession would not be equivalent to an agreement. So that when the House receded the bill could only stand in its then shape, subject to future agreement, but not agreed to. For, as has been seen, receding from a portion of amendments previously made, cannot be regarded as equivalent to an agreement to the bill in

any other shape, nor as a passage of the bill in its original shape. Such action serves only to bring the proposed measure to a specific form, upon which the sense of either House may afterwards be taken for its final passage or rejection. Until that sense shall be taken upon its final form, it remains simply as a proposition to be considered, passed, or rejected, having no force or validity as a law until after final passage, and capable of receiving none by any other means than passage by the legislative body.

It may be said, the proceedings in relation to this bill are mere irregularities of form. But form is a vital principle in government. The legislative body, in the same sense, holds and exercises its authority merely by form. Thirty-six men in one chamber and seventy-two in another, by observances of certain forms, exercise dominion over the lives and property of nearly two millions of inhabitants in this State. Disregard those forms, and place those very persons in other chambers, or indeed in the same chamber, and their thoughts, words, and actions, may be of no consequence to any man. When constitutional forms come to be disregarded with impunity, free government must speedily end in the worst species of despotism.

Without adverting to the obvious impossibility of the House acting upon the bill, while it was in possession and under consideration of the Senate, it is manifest that what purports in the statute book to be an act to fix and apportion the representation of the General Assembly of Ohio, was never passed by both houses, therefore never received the constitutional sanction, and can in no sense, nor by any construction, be regarded as a law.

Here, it is believed, your committee might rest the case, the facts presented being fully sufficient to show that the bill alluded to, never received the constitutional sanction of the Legislature; and, that there is now, no law in force apportioning the representation of the General Assembly of the State of Ohio. But a careful comparison of the proceedings had on said bill, with the joint rules of the two branches of the last General Assembly, constitutionally adopted, will present a still stronger case against the validity of said bill, as a law.

The eleventh section of the first article of the constitution of the State of Ohio, provides that "each house may determine the rules of its proceedings, punish its members for disorderly behavior," &c.—Rules adopted for the government of either branch of the Legislature and for both branches conjointly, under the provision of this section, have the force of constitutional law, and a strict adherence to each and every rule, so adopted, is absolutely necessary in the passage of a law, to render it valid and binding upon the people.

The third joint standing rule of the two houses, as it stood during the session at which it is claimed that Senate bill No. 70 became a law, reads as follows :

"3d. When a message shall be sent by either house to the other, it shall be immediately announced at the bar of the house to which it

is sent, by the door-keeper, and shall be, by the bearer, *delivered to the clerk of the other branch at his desk, who shall read the same to the house to which it belongs.*"

That this joint standing rule had binding force on the 18th day of February, 1848; that its observance was of as much importance as the observance of any other rule, no man will deny; nor will it be claimed by any honest intelligent man, that joint rules can be suspended by the action of one branch of the Legislature. Yet we find by the Senate Journal of that day, that a message was received from the House, there being no quorum present, and read at the clerk's desk *by the Sergeant-at-Arms of the House!* This message stated that the House had receded from all its amendments to Senate bill No. 70, &c.

This proceeding was all informal, and void, and was of no binding effect whatever. Because, 1st. The house could not recede from its amendments to a Senate bill, while that bill remained in possession of the Senate, which was the case in this instance. 2d. No action of either house is binding and operative, until the other is *officially* informed thereof. Even had there been a quorum of Senators present in the chamber, when this message was read by the Sergeant-at-Arms of the House, it would have amounted to nothing. It was not of as much validity or power as the simple announcement of the fact by a Senator from his seat; for the Sergeant-at-Arms of one branch has no right whatever to open his mouth in the other branch, further than to address the Speaker, when he is announced at the bar. So far as giving life and effect to that message was concerned, he might as well have read it to the *city pump!* For the constitutional rule declares that the door-keeper *shall* deliver such message to the *Clerk*, and that the Clerk shall read the same to the house to which it is addressed! What mockery then, what an insult to the honor and dignity of the Senate, for the Sergeant-at-Arms of the House, to come into the Senate chamber and undertake to perform the duties of your Clerk! And yet it is gravely assumed that such a farce was an official notice to the Senate of the action of the other branch!

But official information of the action of one branch can only be conveyed to the other, when a quorum is present, and both branches in session. As the Journal of the Senate shows that no quorum was present when the message was read, it could not have been a valid notice, even had it been read by the Clerk of the Senate.

Here your committee think the investigation might be closed, with the facts triumphantly established, that the bill under consideration, never received such legislation as to make it a law. But, we must trespass still further upon the patience of the Senate while we point out the other irregularities, in its course through the Senate. It will be seen, on reference to Senate Journal, page 560, that Senate bill No. 70, was under consideration, that Mr. Lewis moved that the Senate recede from its disagreement to third House amendment to said bill; and, that before that motion was decided, or even put, the Senate adjourned!

It is laid down in Jefferson's Manual, and confirmed by universal practice, in all legislative bodies, that an adjournment removes a pending question from before the house; that is, *lays it upon the table*. So, when the Senate adjourned, on the 14th of February, 1848, while the motion of Mr. Lewis to recede from its disagreement to an amendment to the bill then under the consideration of that body, the *bill*, together with the *motion* relating to one of its amendments, *were laid upon the table*. And, it is a well established fact in legislation, that no human power can legally take a bill, resolution, or pending question, from the table, except by a vote of a majority of the Senate or House, having control of the same. Here, then, the fact is established, beyond all cavil or dispute, that Senate bill No. 70, was, on the day last above named, *laid on the table*; and, as no motion to take the same from the table was ever made, that bill was left on the table, at the adjournment of the last General Assembly, and consequently went over among the *unfinished business* of that session.

When a bill is ordered to be engrossed, it is, of course, ordered into the hands of the Clerk. So, also, when a bill is passed, it must go to the Clerk, for enrollment; and, from the hands of the Clerk to the Enrolling committee, who report the bill back to the House, as enrolled.

This bill, however, having been laid on the table, could not get into the hands of the Enrolling committee until taken from the table by a vote of the Senate. The Clerk had no power to take it from the table—the Enrolling committee had no authority to lift it—and the person who did take the bill from the table, committed a high crime against legislative rules and authority, and made a dangerous stab at our form of government. That bill had no more right to be enrolled, than one postponed to the first Monday of December next; and, the Speaker had as much power to sign any other bill, laid on the table, as Senate bill No. 70, which the records show was left there at the adjournment of the last General Assembly.

This fact, of itself, shows that Senate bill No. 70, never became a *law*.

But passing these various objections to the validity of the pretended law under consideration, and leaving these questions for the calm consideration of the Senate, your committee are forced to call attention to other and still more important irregularities and *nullities* in the passage of this bill through the Senate. The fourteenth joint rule provides as follows:

“14. After examination and report, each bill and joint resolution shall be signed in their respective houses, first by the Speaker of the House of Representatives, and then by the Speaker of the Senate, who shall fix the date thereto.”

This rule, the vital importance of which must be obvious to every reflecting mind, was utterly disregarded by the Speaker of the Senate! the Journals showing that no quorum was present when the act of signing took place. The seventeenth section of the first article of the

constitution, provides, that every bill, *having passed both houses*, shall be signed by the Speakers of their respective houses. The Speaker's signature is the constitutional authentication of the passage by the house over which he presides. It is the last act of the body through its chief officer, and is its formal testimonial of what has been done. Hence, signing by the Speakers of the respective houses is *doing business* as an organized body by the hand of the chief officer, and requires in the body itself a capacity to do business. The Speaker, in signing, being the mere instrument of the body over which he presides, his hand, like the pen or the paper, serves only as a means to attest the business done by the house. A plain and familiar illustration is furnished in the signing of a bill by the Foreman of a Grand Jury. To have any validity, a bill must be passed by at least three-fourths of that body, and be signed by the Foreman, who, in this instance may be regarded as its Speaker. The Foreman's signature, like the Speakers, is the prescribed mode of authenticating the act of the body, in the passage of the bill. Who would say that the Foreman of a Grand Jury would have a right, in the absence of his fellow Jurors, to sign and return as a valid indictment, a bill, which, when they separated, was under consideration? Such a bill would be a mere nullity, yet Speaker Goddard's signing, in the absence of a quorum, a bill that had been under consideration when the Senate dissolved, could have no more force, reason or validity. The signing, therefore, to have any validity, must be done by the sanction; and in the presence of a constitutional quorum of each respective house, or else it is a merely private and individual act, having neither force nor authority. Such has been the invariable practice in Congress, and all other legislative bodies; and the joint standing rules of this General Assembly, renders that course imperative. The practice, in other instances, of this Speaker of the Senate, forbids the shallow pretence that anything else was meant by the terms of the joint rules, than that the signing of a bill should be done in the presence of a constitutional quorum of each respective house.

It has been urged by the Speaker of the last Senate, upon this floor, during this session, that the requirements of the seventeenth section of the first article of the constitution, rendered it his impeartive duty to sign all bills which had passed both houses—and taking for granted, that this bill had so passed, it was his duty to have signed it, even if the Legislature had adjourned. And, that if signed in a hotel, on a canal boat, or in a stage coach, it would have been a legal attestation.

To this conclusion your committee cannot come. The proposition is repugnant to every principle of justice and propriety, and revolting to the good sense of every patriotic citizen. It is true the constitution of the State requires the Speaker's signature to bills in order to make them valid, but the rules of each house are founded upon, and authorized by the constitution; and are as binding upon the Legislature who adopt them, until rescinded or suspended by a vote of two-thirds of the members, as the constitution itself. The constitution requires bills to be signed by the Speakers, and the joint rules prescribes *the place*

where they shall be signed, "in the respective houses." This rule is as binding upon the Speaker, as that rule is upon the whole Senate, which requires a motion to reconsider a vote on the passage of a bill, to be made within two days. If a bill is lost, and no motion is made within two days, it cannot again be considered; so, if a bill, which has passed both houses is not signed by the Speakers "in their respective houses," it loses its vitality and cannot be resuscitated.

It may be urged that these irregularities are merely matters of form, and of no vital importance. But forms are often the bulwarks of liberty. He who breaks them down by the sword, is termed a tyrant, and is abhorred by his race; and yet, he who breaks them down by the pen may be equally a traitor and an usurper with him who would break them down by the sword. And he, who as the tool of a party, would take advantage of official station, or violate official duty, in order to steal power from the people, is more dangerous and less respectable than he who, at the head of an armed force, would openly overthrow his government.

In violation of the constitution, of parliamentary law, of congressional and legislative practice, and of the plain and express rules of both houses, the Senate Speaker, in the absence of a constitutional quorum, fraudulently signed what had not passed either house, and by that fraudulent attestation procured it to be placed upon the statute book as a law of the State! ONE INDIVIDUAL THUS USURPING THE LAW-MAKING POWER OF THE STATE! This unauthorized and gross abuse of the highest official power known in the State, cannot be viewed in any other light than as the most dangerous and daring act of usurpation ever witnessed since the organization of the State government. It is believed, moreover, to be without precedent in any State in this republic, and should be forbid by such penalties as may prevent its repetition. The Speakers' signatures are intended as an authentication of a sovereign legislative act of the people, by their representatives, and serves under our popular government, the same purposes as the *great seal* of the Crown of England serves to the people of the United Kingdom. To counterfeit the Royal Seal is there accounted high treason, and is punished with death. To place the Speaker's authentication upon what has not received the constitutional sanction, is *treason to popular government*; and while it may not call for sanguinary punishment, it savors no less of moral guilt towards popular rights and free government, and should not be held in less abhorrence.

APPLICATION OF THE TESTIMONY.

The short time allowed to your committee for the taking of testimony, precludes the possibility of obtaining all the evidence needed upon so grave and important a subject; or to review that testimony and apply it to the facts. But enough has been elicited to show the most dangerous and alarming departure from the plainest parliamentary principles, and a disregard of the most important con-

stitutional rules. The power to fix and apportion the Representatives and Senators in the General Assembly among the several counties, being one of the highest attributes of sovereignty, should be fairly and justly exercised, and every facility allowed the minority to perfect the bill, and thereby protect their rights ; for the operation and results of this bill involve the dearest and most sacred rights of freemen, including life, liberty and the pursuit of happiness. Upon the just operation of this bill depends the equal representation of the people—the most vital and important principle of republican government.

The testimony has been snatched up here and there in great haste; the hurry and confusion incident to the approaching adjournment of the Legislature rendering it impossible to procure the regular attendance of those witnesses whose testimony had bearing upon the same point, and many of the most important witnesses could not be procured in time to testify previous to your adjournment. But your committee think the testimony will establish the belief that an unlawful and unmanly conspiracy was entered into by the leading whigs then assembled in the capitol, to obtain and perpetuate, by legislative usurpation, the political power of the State into their own hands. This fact first discloses itself in the proceedings of the joint committee on Apportionment. It is in evidence that when the bill was undergoing its consideration in committee, columns of figures were attached opposite each district, showing its *political* character, and which, when added, gave the whigs a large majority in both branches of the General Assembly ! This fact will, in some measure, serve as a key to the action of the whigs during the further progress of the bill, after it had been matured and presented to both houses.

The testimony of Mr. Drake, to whose ingenious and skilful answers to direct questions particular attention is directed, unfolds a deep laid scheme to deceive and betray the democratic members of the House, and by a species of base and detestable legerdemain, give some sort of plausibility to the claim that the bill had passed the House ! At that time Senate bill, No. 70, was either lying on the table of the Senate, or it was suspended before that body, on a motion to recede, by the announcement of the fact that no quorum was present. In this state of the case, your committee think the House had no power whatever, either express or implied, to act upon that bill, and in this opinion they are fully sustained by the testimony of Dr. Olds and Speaker Breslin, two experienced parliamentarians. But this was no barrier to the usurpers in the House, when opposed to the accomplishment of their darling project. Mr. Drake swears that the resolution offered by Elah Parke was drafted by *himself*—and the question becomes of some importance, why did he procure another member to offer it ? That was an important stage in the proceedings—on a motion to send for a return of the bill *angry discussion* might have been elicited, a thing deeply deprecated by the whigs just at that moment ! To propose to recede by a motion, would have attracted the observation of democratic members, a thing previously determined must not be done ! Hence some other manœuvre must be devised: Mr. Drake dare not offer the resolution himself, because any

movement of his would have been understood and defeated. But the conspirators had perfected their plans, and hence Elah Parke, an old man who had never before offered a resolution, or made an important motion, was selected to offer a resolution of the most exciting and important character.

This resolution was read by the temporary Speaker in a low and inaudible voice, so that the most lynx-eyed democrat could not tell what were its contents, and in a hasty, unusual, uncourteous and unparliamentary manner it was decided to have been "passed." But to aid in the treachery, the Speaker himself, Mr. Hawkins, had vacated the chair, and called a member to preside who seldom, if ever, had been previously chosen to preside, and at a time when the most important measure, calculated to produce angry discussion, had been previously determined to be acted upon at that time. These facts are clearly shown by the testimony of Messrs. Smith and Drake, who were then members and in their seats at the time. There are several other witnesses, including Mr. Parke himself and Speaker Hawkins, whose testimony it is believed would prove these facts still stronger, but who live at such distance as to render it impossible to procure their attendance before your adjournment. But enough is elicited to fasten the charge of conspiracy upon the whigs of the House!

An attempt will be made, it is supposed, to justify this treachery and deception, under the pretence that a fear was entertained that the democratic members would "absquatulate." Without stopping to denounce the monstrous idea of justifying such conduct upon any principle, your committee deny that such was the only reason for the base trickery.

By reference to the testimony of Speaker Goddard, it will be seen that he gives it as his opinion, under oath, that one branch cannot "regularly" act upon a bill while that bill is in possession of the other branch. He says, "the most regular and orderly mode of proceeding would be for the branch which is acting on the bill to have it before it." And he further says, "any member might reasonably *require* its production before action." Here, then, is plainly seen one secret of all the plottings and all the manœuvres with Mr. Parke! The House had not the bill before it, and any democratic member might require its production on a point of order, had it been known that the bill was the subject of consideration. This demand might have stayed their treasonable acts, or if not, it might have been the means of withholding the signature of Speaker Goddard! This wicked plot was, therefore, got up for the express purpose of deceiving the minority in the House, and by stealth to prevent them from participating in action on the bill!

But aside from this fraud, the act of itself is illegal, and was out of order, and consequently, if Mr. Drake's parliamentary theory is correct, these proceedings ought to have been omitted from the journals.

The next most important fact brought to light in this strange and treasonable conspiracy, is that the bill was ordered by the clerk of the Senate to be enrolled by the enrolling clerk of the House "with *des-*

patch," in hot haste thus overriding parliamentary law and precedent and the express joint rules of the two houses, and was examined and compared by the enrolling committee, previous to the action on Mr. Parke's resolution receding from House amendments ! The joint rules require that enrolled bills shall be examined by a joint committee of two members of each house ; and the testimony reveals the fact that but *two* members of the committee, one from each branch, and both *whigs*, examined the bill, and in so great a hurry were they, that the bill was permitted to go with an important *erasure* on its face ! The democrats not only had no opportunity to examine the bill, but had no knowledge that it was in the hands of that committee. Why this course was adopted is readily inferred by the action on the receding resolution !

Your committee call attention to the *manner* and *place* where the bill was signed by the Speaker of the Senate. An argument has already been made against the power of the Speaker to sign bills when the Senate was not in session, or when a quorum was not present. The testimony shows that this bill was signed by the Senate Speaker *in his room* at his lodgings, when the Senate was not in session, and before it had been reported by the enrolling committee, and before it had come in a message from the House, announcing the signature of the Speaker of that body ! Thus most insultingly setting at defiance the joint rules which require that bills must be signed by the Speakers in their respective houses !

The resolution under which your committee was raised require an investigation as to a fraudulent alteration of the journals of the two houses. The testimony on that point proves that neither journal is a correct record of the proceedings. A message was sent from the House informing the Senate that the House had reconsidered its vote on the passage of Senate bill, No. 70. That message was read in the Senate, but no record of the fact appears upon the Senate journal. It also appears in evidence that the vote on the passage of that bill was actually reconsidered by the House, but that fact was never placed upon the journal, or if placed there, has been fraudulently suppressed.

An attempt has been made by the majority of your committee to involve the whole question relative to the passage of the bill under consideration, in one of *opinion* on the construction of parliamentary law and equivalent questions ; and to direct the attention of the Senate, and the country, from the main and vital question, by a lengthy investigation on parliamentary principles and practice. That testimony, however, throws but little light upon the subject, being conflicting, vague and uncertain, and sometimes ridiculous—and the liberties, rights and interests of the people, would remain in constant jeopardy, with no more safe and certain legislative guide than the whig construction of parliamentary law. But the constitutional rules of each house, and the joint rules of both branches, are couched in plain, express, and positive terms, and about their proper construction there can be little or no cavil. And where these rules are strictly adhered to, there

can be no dispute in regard to the legal and constitutional passage of laws.

But a close examination of the testimony of Mr. Drake, in regard to the system of parliamentary tactics by which he attempts to sustain the *legal* passage of Senate bill, No. 70, will present to the mind a most ridiculous and absurd theory of legislative procedure, and when fully carried out, becomes a splendid system of *nonsense*! The wheels of his machinery soon become clogged, and his whole system *explodes*. This will appear manifest to the most casual observer, by following up the questions put by the undersigned, and examining his replies, until they arrive at the following question :

“When a bill which has passed the Senate, been amended in the House, and returned to the Senate, that body disagreeing to the amendments and returning the bill to the House, which receding from some of its amendments and insisting upon others, sends it back to the Senate, and then, while it remains under consideration in the Senate, the House recedes from its remaining amendments *at the same time* that the Senate recedes from its disagreement. In what shape does the bill become a law? as last amended by the House, or as last agreed to in the Senate?”

This singular and intricate question, and the consequent result of one branch acting upon a bill in possession of the other, shows as clear as the noonday sun, the utter absurdity and impracticability of his parliamentary tactics. Gen. Goddard and Mr. Drake both assume that in this state of the case the bill *does not become a law*! The wheels of their machinery have stopped—their machinery has become clogged—and the whole farce has to be re-enacted, and a strife must ensue, of course, between the two houses, to ascertain which can get the bill through first! It is worthy of remark here, also, that the claim that a bill is a law because it has *passed* both houses, is here exploded, for this bill would have passed both houses, and yet these parliamentarians admit it would have been no law. Farther comment on this subject is unnecessary.

Your committee come now to that provision of your resolution which required an investigation into the conduct of the 15 Senators who vacated their seats at the last session. A perusal of the testimony on this point will convince the most prejudiced mind that the characters of those Senators had suffered nothing by the investigation. No government officers plotted treason with them—they held no caucuses relative to their secession, and many of them signed the paper presented at the time, in their seats, or after they had left the Senate chamber. They vacated their seats because they had conscientious scruples against being willing instruments in the violation of the constitution, and could not tamely sit by and witness the violation of that sacred instrument, and the disfranchisement of their constituents. They took the step they did “because it was all the law the tyrannical usurpers had left them.” All the courtesies of life had been disregarded—the privileges of Senators laughed at—parliamentary law and constitutional rules were disobeyed—and the constitution itself

overthrown; hence they had no recourse but to their *natural rights* ! But in every case their conduct has been sustained by their constituents, approved by their consciences, and when the facts are known, will be supported by the judgment of the civilized world.

All which is respectfully submitted.

A. G. DIMMOCK.

EXTRACTS

From the Journals of the General Assembly in relation to the introduction and passage of the Apportionment Law.

HOUSE JOURNAL, p. 13 to 15.

December 8, 1847.

On Enrollment—Messrs Breck and Noble.

SENATE, p. 9 to 11.

December 7, 1847.

On Enrollment—Messrs. Byers, Hastings and Burns.

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January 12.

Mr. Wilson, from the joint select committee heretofore appointed upon that subject, reported a bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio ; which was read the first time.

Accompanying said bill was the following report :

(See Appendix, p. 51.)

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January 13.

The following bills were severally read the second time, committed to a committee of the whole Senate, and made the order of the day for this day :

S. No. 70 ; To fix and apportion the representation of the General Assembly of the State of Ohio.

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January 22.

On motion of Mr. Stutson,
The Senate resolved itself into a committee of the whole upon the

orders of the day, and after some time spent therein, rose, and Mr. Bennett reported that the committee had had under consideration Senate bill No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio, and had made progress therein, and asked and obtained leave to sit again.

On motion of Mr. Burns,
The Senate took a recess.

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On motion of Mr. Kendall,
The Senate again resolved itself into a committee of the whole, upon the orders of the day, and after some time spent therein, rose, and Mr. Bennett reported back the following bill :

S. No. 70 ; To fix and apportion the representation of the General Assembly of the State of Ohio.

On motion of Mr. Lewis,
Said bill was laid upon the table.

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January 25.

On motion of Mr. Olds,
S. No. 70, To fix and apportion the representation of the General Assembly of the State of Ohio, was taken up.

Mr. Bennett moved to amend said bill as follows :

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Strike out lines 50, 51 and 52 in section 1, and insert, " to the counties of Adams and Pike one representative ; to the counties of Scioto and Lawrence one representative ; and to the four counties one senator, to be elected in the years eighteen hundred and forty-nine and eighteen hundred and fifty-one.

And upon that question Mr. Kendall demanded the yeas and nays, which were ordered, and resulted—yeas 26, nays 9, as follows :

YEAS—Messrs. Ankeny, Archbold, Backus, Beaver, Bennett, Blockson, Byers, Burns, Cronise, Eaton, Emrie, Evans, Ewing, Graham, Haines, Hastings, Hopkins, Johnson, King, Olds, Randall, Reemelin, Scott, Spindler, Winegarner and Speaker—26.

NAYS—Messrs. Claypool, Corwin, Hamilton, Horton, Judy, Kendall, Lewis, Stutson and Wilson—9.

So the amendment was agreed to.

On motion of Mr. Bennett,
Said bill was further amended, as follows :

Strike out lines 43, 44 and 45, in section 2, and insert—

"The abstract of votes given for senator in the counties of Adams, Pike and Lawrence shall be transmitted to the clerk of the court of common pleas of Scioto county.

"The abstract of votes given for representative in the county of Lawrence shall be transmitted to the clerk of the court of common pleas of Scioto county.

"The abstract of votes given for representative in the county of Pike shall be transmitted to the clerk of the court of common pleas of Adams county."

Mr. Lewis moved to amend said bill as follows :

In section 1, line 33, strike out the last clause of the paragraph, after the word "fifty," and insert the following :

"To the counties of Lucas and Henry one representative ; to the counties of Wood, Sandusky and Ottawa, one representative."

Mr. Olds moved to amend said amendment by inserting, after the word "fifty," the following :

"To the counties of Henry, Lucas and Ottawa, one representative; to the counties of Wood and Sandusky, one representative."

Upon which question that gentleman demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 19, as follows :

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment to the amendment was disagreed to.

Mr. Olds then moved to amend said amendment by inserting, after the word "fifty," as follows :

"To the counties of Henry, Lucas, Wood, Ottawa and Sandusky, two representatives."

Upon which question that gentleman demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 19, as follows :

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment to the amendment was disagreed to.

The question then recurring upon the amendment offered by Mr. Lewis ;

Mr. Claypool demanded the yeas and nays thereon, which were ordered, and resulted—yeas 20, nays 13, as follows :

YEAS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Evans, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—20.

NAYS—Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Ewing, King, Olds, Scott, Spindler, Wheeler and Winegarner—13.

So the amendment was agreed to.

Mr. Lewis also moved further to amend the bill, as follows :

Strike out lines 32, 33, 34 and 35, in section 2, and insert—

"The abstract of votes given for representative in the county of Henry shall be transmitted to the clerk of the court of common pleas of Lucas county.

"The abstract of votes given for representative in the counties of Wood and Ottawa shall be transmitted to the clerk of the court of common pleas of Sandusky county."

Which was agreed to.

Mr. Hopkins moved further to amend the bill, as follows:

Strike out lines 27, 28 and 29, of section 1, and insert—

"To the county of Miami one representative; to the counties of Darke and Shelby one representative; and to the three counties, one senator, to be elected in the years 1848 and 1850."

Mr. Wilson demanded the yeas and nays thereon, which were ordered, and resulted—yeas 24, nays 10, as follows:

YEAS—Messrs. Ankeny, Archbold, Backus, Beaver, Bennett, Blockson, Byers, Burns, Cronise, Eaton, Emrie, Evans, Ewing, Haines, Hopkins, Johnson, King, Olds, Reemelin, Scott, Spindler, Stutson, Wheeler, Winegarner and Speaker—24.

NAYS—Messrs. Claypool, Corwin, Hamilton, Hastings, Horton, Judy, Kendall, Lewis, Randall and Wilson—10.

So the amendment was agreed to.

Mr. Hopkins also moved further to amend the bill as follows:

Strike out lines 18 and 19, in section 2, and insert—

"The abstract of votes given for senator in the counties of Darke and Shelby shall be transmitted to the clerk of the court of common pleas of Miami county.

"The abstract of votes given for representative in the county of Shelby shall be transmitted to the clerk of the court of common pleas of Darke county."

Which was agreed to.

Mr. Burns moved to amend section 1, line 30, as follows:

Strike out the words "and two Representatives," and insert "To the counties of Miami and Hardin one Representative, and to the counties of Logan and Union one Representative."

Mr. Bennett moved to amend the amendment by inserting the following:

"To the counties of Logan and Hardin one Representative; to the counties of Union and Marion one Representative; and to the four counties one Senator, to be elected in the years eighteen hundred and forty-nine and eighteen hundred and fifty one."

Upon which question the yeas and nays were demanded and ordered, and resulted—yeas 19, nays 16, as follows:

YEAS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

NAYS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

So the amendment to the amendment was agreed to.

And the amendment as amended was then agreed to.

On motion of Mr. Bennett,

The bill was further amended as follows:

Strike out lines 20, 21 and 22, of section 2, and insert—

“The abstract of votes given for Senator, in the counties of Marion, Hardin and Union, shall be transmitted to the clerk of the court of common pleas of Logan county. The abstract of votes given for Representative of the county of Hardin, shall be transmitted to the clerk of the court of common pleas of Logan county. The abstract of votes given for representative in the county of Union, shall be transmitted to the clerk of the court of common pleas of Marion county.”

Mr. Archbold then moved to amend the bill as follows:

Strike out of lines 80 and 81, the words, “To the county of Belmont two Representatives, and to the county of Monroe one Representative,” and insert, “To the counties of Belmont and Monroe three Representatives.”

And upon that question Mr. Bennett demanded the yeas and nays, which were ordered, and resulted—yeas 15, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Wheeler and Winegarner—15.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Spesker—19.

So the amendment was lost.

Mr. Emrie moved to amend as follows:

The 21st and 22d lines in the first section of said bill by striking out the words “county one Representative,” where they occur in said lines, and inserting the following:

“To each of the counties of Warren and Greene, one Representative, and to the counties of Clinton and Fayette, one Representative, to be elected by the two last named counties in common.”

Upon which question the yeas and nays were demanded and ordered, and resulted—yeas 16, nays 19, as follows:

YEAS—Messrs. Ankney, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment was disagreed to.

On motion of Mr. Scott,

The Senate took a recess.

On motion of Mr. Wilson,

S. No. 70; To fix and apportion the representation of the General Assembly of the State of Ohio, was taken up.

Mr. Wilson then moved to amend said bill as follows:

Strike out all in lines 80 and 81, in section 1, after the word fifty-one, in line 80, and insert—"to the county of Belmont, one Representative, to the county of Monroe one Representative, and to the counties of Belmont and Guernsey one Representative, to be elected by the two last named counties in common."

Mr. Olds moved to amend the amendment by inserting the word "Monroe," after the word "Belmont," and by striking out the word "two," and inserting "three" in lieu thereof.

Upon that question Mr. Olds demanded the yeas and nays, which were ordered, and resulted—yeas 14, nays 21, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Spindler, Wheeler and Winegarner—14.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Reemelin, Scott, Stutson, Wilson and Speaker—21.

So the amendment to the amendment was rejected.

The question recurring on the amendment proposed by Mr. Wilson was agreed to.

Mr. Wilson also moved further to amend said bill as follows:

Amend section 2, in line 65, by adding the following: "and the abstract of votes given in Guernsey county, for representative elected in common by the counties of Belmont and Guernsey, shall be transmitted to the clerk of the court of common pleas of Belmont county."

Which was agreed to.

Mr. Olds moved further to amend the bill as follows:

"To the counties of Ross and Pickaway, one Senator, to be elected in the years 1849 and 1851; to the county of Ross one Representative, and to the county of Pickaway one Representative."

Upon which question that gentleman demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment was lost.

Mr. King moved to amend the bill as follows:

Sec. 1, line 13, strike out all in line 13, to the word "the," before the word "Senator," and insert "to the counties of Butler and Preble, one Senator and two Representatives."

Upon which question, Mr. Wilson demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment was rejected.

On motion of Mr. Horton,

The bill was further amended as follows:

First amendment. Strike out lines 59, 60 and 61, in section one, and insert:

“To the counties of Gallia and Jackson, one Representative; to the counties of Athens and Meigs, one representative; to the four counties, one representative to be elected in common; and to the four counties, one senator, to be elected in the years eighteen hundred and forty-nine and eighteen hundred and fifty-one.”

Second amendment. Strike out lines 51, 52 and 53, of section 2, and insert:

“The abstract of votes given for senator and for the one representative to be elected in common in the counties of Athens, Gallia and Jackson shall be transmitted to the clerk of the court of common pleas of Meigs county.

“The abstract of votes given for the representative to be elected in the counties of Gallia and Jackson shall be transmitted to the clerk of the court of common pleas of Gallia county.

“The abstract of votes given for the representative in the counties of Meigs and Athens shall be transmitted to the clerk of the court of common pleas of Meigs county.”

Mr. Olds moved that the Senate now adjourn;

Upon which question he demanded the yeas and nays, which were ordered, and resulted—yeas 21, nays 15, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Claypool, Cronise, Emrie, Evans, Ewing, Graham, Hamilton, Horton, King, Olds, Reemelin, Scott, Spindler, Wheeler, Wilson and Winegarner—21.

NAYS—Messrs. Backus, Beaver, Bennett, Corwin, Eaton, Haines, Hastings, Hopkins, Johnson, Judy, Kendall, Lewis, Randall, Stutson and Speaker—15.

So the Senate adjourned.

Attest:

ALBERT GALLOWAY, Clerk.

January 26, 1848.

On motion of the same gentleman,

S. No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio, was taken up.

The same gentleman moved to refer said bill to the committee on the Judiciary; which was disagreed to.

Mr. Blocksom moved to amend the bill as follows:

Insert at the end of line 78, section 1; "and in the two last named counties, one representative, to be elected in the years eighteen hundred and forty-eight and eighteen hundred and fifty."

Upon which question that gentleman demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—10.

So the amendment was disagreed to.

Mr. Scott moved to amend the bill as follows:

Strike out lines 15, 16 and 17, in section 1, and insert, "to the county of Montgomery, one senator and one representative; the senator to be elected in the years 1848 and 1850."

And upon that motion he demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 18, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Stutson, Wilson and Speaker—18.

So the motion was disagreed to.

Mr. Scott also moved to amend the bill as follows:

Strike out lines 13 and 14 in section one, and insert, "to the counties of Butler and Preble, one senator, to be elected in 1848 and 1850, and to each county one representative."

Upon which motion that gentleman demanded the yeas and nays, which were ordered, and resulted—yeas 17, nays 18, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Stutson, Wilson and Speaker—18.

So the amendment was lost.

Mr. Emrie moved to amend the bill as follows:

Strike out the 21st, 22d and 23d lines of the first section; also, the

47th, 48th and 49th lines of the same section, and insert the following:

“To the counties of Warren and Greene, one senator, and to each of said counties one representative; the senator to be elected in the years 1849 and 1851.

“To the counties of Highland, Clinton and Fayette, one senator; to the county of Highland, one representative, and to the counties of Clinton and Fayette, one representative in common; the senator to be elected in the years 1849 and 1851.”

And upon that motion Mr. Emrie demanded the yeas and nays, which were ordered, and resulted—yeas 17, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment was disagreed to.

Mr. Scott moved to amend the bill as follows:

“To the counties of Jackson and Athens one representative; to the counties of Gallia and Meigs one representative; and to the four counties one representative in common.”

Upon which motion the yeas and nays were demanded, and ordered, and resulted—yeas 17, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the amendment was lost.

The question then being on ordering the bill to be engrossed,

Mr. Olds demanded the yeas and nays, which were ordered, and resulted—yeas 19, nays 17, as follows:

YEAS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

NAYS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

So the bill was ordered to be engrossed.

Ordered to be read the third time on to morrow.

January 28, 1848.

The following bill was read the third time:

S. No. 70; To fix and apportion the representation of the General Assembly of the State of Ohio.

The question being on the passage of said bill,

Mr. Ewing demanded the yeas and nays, which were ordered, and resulted—yeas 19, nays 17, as follows:

YEAS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

NAYS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

So the bill was passed.

The question then being on agreeing to the title of said bill,

Mr. Olds moved to amend it, as follows, so as to read: "An act to so district the State, as that by a whig majority in the next Legislature, Ohio may be "placed in the fore-front of opposition to the war."

Mr. Reemelin moved to amend the amendment by adding thereto, "and to violate the constitution for base partisan purposes."

Upon which motion, Mr. Ankeny demanded the yeas and nays, which were ordered, and resulted—yeas 18, nays 18, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Corwin, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler, and Winegarner—18.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson, and Speaker—18.

So the amendment was disagreed to.

The question recurring upon the amendment offered by Mr. Olds, Mr. Lewis called for a division of the question.

And the question being first on striking out,

Mr. Olds demanded the yeas and nays, which were ordered, and resulted—yeas 17, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler, and Winegarner—17.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson, and Speaker—19.

So the motion was decided in the negative, and the Senate refused to strike out.

Ordered that the title be as aforesaid.

HOUSE JOURNAL, 425-6.

January 29, 1848.

Message from the Senate.

Mr. Speaker:

The Senate has passed the following bills:

S. No. 70; To fix and apportion the representation of the General Assembly of the State of Ohio.

First reading of the bill.

—
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January 31.

S. No. 70; To fix and apportion the representation of the General Assembly of the State of Ohio.

Read a second time.

—
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H. Nos. 355, 360, and S. No. 70, were severally committed to a committee of the whole House, and made the order of the day for this day.

On motion of Mr. Drake,

The amendments of the Senate to the *printed* Senate bill No. 70, were ordered to be printed in advance of other printing for the House.—
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February 4.

On motion of Mr. Pennington,

The House resolved itself into a committee of the whole upon the orders of the day, and after some time spent therein, the committee rose, and Mr. Drake reported that they had under consideration the bill (S. No. 70,) to fix and apportion the representation of the General Assembly of the State of Ohio, and had directed him to report the same back without amendment.

Mr. Elliott moved that the House adjourn; which motion was lost.

Mr. Russell moved that the House take a recess until seven o'clock P. M.;

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 35, nays 27.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Drake, Dodds, Farrington, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Phillips, Randall, Robinson, Russell, Sew-

ard, Totten, Trimble, Truesdale, Voris, Weston, Wilson, and Speaker—35.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Corwine, Cotton, Cock, Coe, Elliott, Johnston, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, McWright, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—27.

So the question was decided in the affirmative; and
The House took a recess until seven o'clock, P. M.

SEVEN O'CLOCK, P. M.

On motion of Mr. Warren,

S. No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio, was recommitted to a select committee of five—Messrs. Warren, Drake, Anthony, Coolman, and Nigh.

February 8.

Mr. Drake, from a select committee, reported back the bill (S. No. 70,) to fix and apportion the representation of the General Assembly of the State of Ohio, with sundry amendments.

The question being upon agreeing to the first of said amendments, to wit: striking out the following: "to the counties of Fairfield, Perry, and Hocking, one senator and one representative, the senator to be elected in the years 1848 and 1850: to the county of Fairfield, one representative, and to the counties of Perry and Hocking one representative;" and inserting in the place thereof the following: "to the counties of Fairfield, Perry, and Hocking, one senator and three representatives, the senator to be elected in the years 1848 and 1850."

Upon that question, the yeas and nays being demanded and ordered, resulted—yeas 46, nays 16.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Blake, Brackley, Brainerd, Breck, Crothers, Conklin, Coolman, Cotton, Culbertson, Drake, Elliott, Farrington, Greene, Hardesty, Harrington, Holcomb, Huston, Johnston, Kimball, Landis, Lawrence, Lidey, Matthews, Morrow, Musgrave, McKenney, Nigh, Park, Pennington, Perry, Phillips, Potter, Randall, Robinson, Russell, Smith of *Hamilton*, Seward, Taylor, Totten, Trimble, Vorhes, Voris, Wilson, and Speaker—46.

Those who voted in the negative were—

Messrs. Armstrong, Bain, Clark, Cock, Coe, Dodds, Haynes, Kennedy, Lyle, Noble, Norris, Shaw, Truesdale, Warren, Westen, and Williams of *Coshocton*—16.

So the question was decided in the affirmative.

The remaining amendments of the committee to said bill were severally agreed to.

Mr. Potter moved further to amend said bill by striking out "to the counties of Lucas and Henry, one representative; to the counties of Wood, Sandusky, and Ottawa, one representative," and inserting in place thereof the words, "and to the same counties two representatives."

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 26, nays 37.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Clark, Converse, Coolman, Cock, Coe, Fristoe, Johnston, Kennedy, Landis, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Totten, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—26.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37.

So the motion was lost.

Mr. Huston moved further to amend said bill by striking out all after "Adams," in line 70, and lines 71, 72, 73, and 74, and inserting the following: "Pike, Scioto, and Lawrence, one senator and two representatives; the senator to be elected in the years 1849 and 1851."

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 37, nays 27.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty,

Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Clark, Coolman, Cock, Coe, Elliott,

Fristoe, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Totten, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—27.

So the motion prevailed.

On motion of the same gentleman,

Said bill was further amended by striking out in line 72, all after the word "county," and lines 73, 74, 75, and 76, and inserting the following: "The abstract of votes given for representatives in the counties of Adams, Pike, and Lawrence, shall be transmitted to the clerk of the court of common pleas of Scioto county."

On motion of Mr. Holcomb,

Said bill was further amended in sec. 2, line 85, by striking out the word "Gallia," and inserting "Meigs;" and in line 87, by striking out "Meigs," and inserting "Gallia."

Mr. Armstrong moved further to amend said bill in sec. 1, line 6, after the word "representatives," by striking out all in lines 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, and inserting "one senator to be elected in 1848 and 1850, and one senator to be elected in 1849 and 1851."

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 28, nays 37.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Fristoe, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Totten, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—28.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37.

So the motion was lost.

Mr. Converse moved further to amend said bill.

On motion of Mr. Cock,

The House adjourned.

On motion of Mr. Pennington,

The House took up the bill (S. No. 70,) to fix and apportion the representation of the General Assembly of the State of Ohio.

The question being upon agreeing to the amendment proposed by Mr. Converse, to wit: in section one, strike out from the word "two," in the fifth line, to the word "one," in the thirteenth line, and insert the following:

"To the county of Hamilton, two senators and five representatives, to be elected as follows: so much of the county of Hamilton as is comprised in the corporate limits of the city of Cincinnati shall compose the first district, and shall be entitled to one senator and three representatives, the senator to be elected in the years 1849 and 1851. So much of said county of Hamilton as is not included in the first district shall compose the second district, and shall be entitled to one senator and two representatives, the senator to be elected in the years 1848 and 1850."

Upon that question the yeas and nays being demanded and ordered, resulted—yeas 25, nays 36.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Fristoe, Kennedy, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Vorhes, Williams of *Coshocton*, and Williams of *Columbiana*—25.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Conklin, Crothers, Culbertson, Dodds, Drake, Farrington, Greene, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—36.

So the question was decided in the negative.

On motion of Mr. Vorhes,

Said bill was amended in sec. 1, lines 123 and 124, by striking out the words, "and two representatives," and inserting the words, "and to each county one representative," so as to give to the counties of Knox and Holmes, each, one representative.

On motion of the same gentleman,

Said bill was further amended in sec. 2, line 118, where the same refers to the returns of the abstract of votes in Holmes county, by striking out the words "and representative."

Mr. Musgrave moved to amend said bill in section 1, line 119, by striking out the word "Wayne," and inserting "Lorain," so as to include in one district the counties of Lorain and Ashland; and in line 147 of the same section, by striking out the word "Lorain" and in-

serting the word "Wayne," so as to include in one district the counties of Medina and Wayne.

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 24, nays 36.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Elliott, Landis, Lidey, Lyle, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Vorhes, Warren, Williams of *Coshocton*, Williams of *Columbiana*—24.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—36.

So the motion was lost.

Mr. Clark moved to amend said bill in sec. 1, lines 18 and 19, by striking out the words, "to the county of Butler one senator and one representative," and inserting the following: "to the counties of Butler and Preble one senator and two representatives, the representatives to be elected in common."

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 28, nays 37.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Corwine, Cotton, Cock, Coe, Elliott, Johnston, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Vorhes, Warren, Williams of *Coshocton*, Williams of *Columbiana*—28.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardisty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37.

So the motion was lost.

Mr. Musgrave moved to amend said bill in sec. 1, line 120, by striking out the words "two representatives," where the same refers to the number of representatives for the counties of Wayne and Ashland, and inserting "to each county one representative;" which motion was lost.

Mr. Patton moved to amend said bill in sec. 1, line 108, where the same refers to the number of representatives for the counties of Ma-

honing and *Columbiana*, by adding the following: "The county of

Columbiana shall have as many representatives as the county of Franklin, namely, two."

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 25, nays 37.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Landis, Lidey, Lyle, Morrow, Musgrave, Noble, Norris, Patton, Potter, Shaw, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—25.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37.

So the motion was lost.

Mr. Haynes moved to amend said bill in section 1, by striking out lines 37, 38, 39, and 40, and inserting the following, to wit: "to the counties of Miami, Darke and Shelby, one senator and two representatives; the senator to be elected in the years 1848 and 1850."

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 37, nays 26.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—26.

So the motion prevailed.

On motion of Mr. Haynes,

Said bill was further amended in sec. 2, line 29, where the same refers to the return of the abstract of votes in the counties of Darke and Shelby, by inserting after the word "senator," the words "and representatives."

On motion of the same gentleman,

Said bill was further amended, in the same section, by striking out the following: "The abstract of votes given for representative in the

county of Shelby, shall be transmitted to the clerk of the court of common pleas of Darke county."

The same gentleman moved further to amend said bill in section 1, by striking out the following: "To the counties of Logan and Hardin, one representative; to the counties of Union and Marion, one representative, and to the four counties one senator," and inserting the words, "the senator and two representatives."

Upon which motion the yeas and nays being demanded and ordered, resulted—yeas 37, nay 27.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson, and Speaker—37

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—27.

So the motion prevailed.

On motion of Mr. Haynes,

Said bill was further amended, in section 2, line 34, by inserting, after the word "senator," the words "and representatives," where the same refers to the returns of the abstract of votes in the counties of Marion, Hardin and Union.

On motion of the same gentleman,

Said bill was further amended, in section 2, by striking out the following: "The abstract of votes given for representative in the county of Hardin shall be transmitted to the clerk of the court of common pleas of Logan county. The abstract of votes given for representative in the county of Union shall be transmitted to the clerk of the court of common pleas of Marion county."

Mr. Anthony moved that the House reconsider the vote by which it agreed to the amendment proposed by Mr. Vorhes, giving to the counties of Knox and Holmes each one representative;

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 31, nays 31.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Har-

rington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Pennington, Perry, Phillips, Randall, Robinson, Taylor, Trimble, Voris, Westen, Wilson and Speaker—31.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKinney, Nigh, Noble, Norris, Park, Patton, Potter, Russell, Seward, Shaw, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—31.

So the motion was lost.

Mr. Lawrence moved that said bill be recommitted to a select committee of five; which motion was lost.

Mr. Williams of *Columbiana*, moved to amend said bill, in section 1, line 62, after the word "common," by inserting "for the years eighteen hundred and forty-nine and eighteen hundred and fifty-one;" and inserting in line 109, after the word "representative," "and one additional representative for the years eighteen hundred and forty-eight and eighteen hundred and fifty-two, to be elected in common;"

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 27, nays 36.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Kennedy, Landis, Lidy, Lyle, Morrow, Musgrave, McKinney, Noble, Norris, Patton, Potter, Shaw, Vorhes, Warren, Williams of *Coshocton* and Williams of *Columbiana*—27.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainard, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson and Speaker—36.

So the motion was lost.

Mr. Potter moved to amend said bill, in section 1, by striking out the following: "to the counties of Lucas and Henry one representative; to the counties of Wood, Sandusky and Ottawa one representative," and inserting, "to the counties of Lucas, Henry and Ottawa one representative; to the counties of Wood and Sandusky one representative;"

Upon which motion the yeas and nays being demanded and ordered, resulted—yeas 28, nays 34.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Russell, Shaw, Vorhes, Warren, Williams of *Coshocton*, and Williams of *Columbiana*—28.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Seward, Trimble, Truesdale, Voris, Westen, Wilson and Speaker—34.

So the motion was lost.

Mr. Williams of *Columbiana* moved further to amend said bill, in section 1, line 136, where the same refers to the number of representatives for the county of Ashtabula and Lake, by inserting, after the word representatives, the following: "for the years eighteen hundred and forty-eight and eighteen hundred and fifty; and one representative for the years eighteen hundred and forty-nine and eighteen hundred and fifty-one;

And in same section, line 109, where the same refers to the number of representatives for the counties of Columbiana and Mahoning, by inserting, after the word representative, the following: "and one additional representative to the county of Columbiana, for the year eighteen hundred and forty-nine; and one in the year eighteen hundred and fifty-one, to be elected in common;"

Upon which motion, the yeas and nays being demanded and ordered, resulted—yeas 27, nays 37.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Vorhes, Warren, Williams of *Coshocton* and Williams of *Columbiana*—27.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson and Speaker—37.

So the motion was lost.

Mr. Williams of *Coshocton*, moved to amend said bill by inserting the following:

"To the counties of Knox, Holmes, Tuscarawas and Carroll, four representatives and one senator in 1848, one Senator in 1849, one Senator in 1850, and one senator in 1851."

Which motion was lost.

Mr. Cotton moved that the House take a recess; which motion was lost.

Mr. Noble moved that said bill be recommitted to a select committee of five; which motion was lost.

Mr. Vorhes moved that said bill be recommitted to a select committee of two.

On motion of Mr. Cotton,
The House took a recess.

TWO O'CLOCK, P. M.

The question being upon recommitting the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio to a select committee of two;

Upon that question the yeas and nays being demanded and ordered, resulted—yeas 24, nays 36.

Those who voted in the affirmative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Coolman, Cotton, Cock, Coe, Elliott, Fristoe, Johnston, Kennedy, Lyle, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Totten, Vorhes, Warren, and Williams of *Columbiana*—24.

Those who voted in the negative were—

Messrs. Anthony, Atherton, Bain, Blake, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson and Speaker—36.

So the question was decided in the negative.

On motion of Mr. Haynes,

Said bill was recommitted to a select committee of three—Messrs. Haynes, Vorhes and Blake.

On motion of Mr. Haynes,

The rules of the House were suspended.

The same gentleman, from a select committee, reported back the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio, with two amendments; which were severally agreed to.

The question being upon ordering said bill to be read the third time,

Upon that question the yeas and nays being demanded and ordered, resulted—yeas 35, nays 25.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, Nigh, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Park, Taylor, Trimble, Truesdale, Voris, Westen, Wilson and Speaker—35.

These who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Coolman, Cotton, Cock, Coe, Elliott, Fristoe, Johnston, Kennedy, Lidey, Lyle, Morrow, Musgrave, Noble, Norris, Patton, Potter, Shaw, Totten, Vorhes, Warren and Williams of *Columbiana*—25.

So the question was decided in the affirmative, and the bill ordered to be read the third time to-morrow.

February 10.

BILLS ON THEIR THIRD READING.

S. No. 70, To fix and apportion the representation of the General Assembly of the State of Ohio, was read the third time.

On motion of Mr. Conklin,

Said bill was recommitted to a select committee of three—Messrs. Conklin, Elliott and Westen.

Mr. Conklin, from a select committee, reported back the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio, with sundry amendments; which were severally agreed to.

The question being—"Shall the bill pass?"

Upon that question the yeas and nays being demanded and ordered, resulted—yeas 37, nays 29.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty,

Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, McLean, Nigh, Park, Pennington, Perry, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen, Wilson and Speaker—37.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Cotton, Cock, Coe, Elliott, Johnston, Kennedy, Landis, Lidey, Lyle, Morrow, Musgrave, McKenney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Totten, Vorhes, Warren, Williams of *Coshocton* and Williams of *Columbiana*—29.

So the question was decided in the affirmative, the bill passed and the title ordered to be as aforesaid.

Mr. Smith of *Hamilton*, for himself and others, gave notice that he would, on some subsequent day of the session, ask leave to enter upon the Journal of the House, a protest against the passage of said bill.

SENATE JOURNAL, 521.

February 11, 1848.

Message from the House of Representatives.

Mr. Speaker:

The House has passed, with amendments, the following bill:

S. No. 70, To fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

H. A. SWIFT, Clerk.

The question being on agreeing to the amendments of the House to said bill;

Mr. Wilson demanded a call of the Senate, which was had.

Mr. Judy was absent.

On motion of Mr. Wilson,

All further proceedings under the call were dispensed with.

Mr. Olds moved to lay said bill on the table.

Mr. Ewing demanded the yeas and nays thereon, which were ordered, and resulted—yeas 17, nays 18, as follows:

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YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—18.

So the motion was lost.

The same gentleman moved to recommit said bill, with the pending amendments, to the committee on the Judiciary.

The yeas and nays were demanded thereon, and ordered, and resulted—yeas 17, nays 18, as follows :

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Spindler, Wheeler and Winegarner—17.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—18.

So the motion was lost.

The question then being on agreeing to the first House amendment,

Strike out all after the the word, "Adams," in line 70, and all of lines 71, 72, 73 and 74, and insert, "Pike, Scioto and Lawrence, one senator and two representatives; the senator to be elected in the years eighteen hundred and forty-nine and eighteen hundred and fifty-one."

Mr. Archbold demanded the yeas and nays thereon, which were ordered; and resulted—yeas 11, nays 22, as follows :

YEAS—Messrs. Beaver, Claypool, Corwin, Haines, Hamilton, Horton, Kendall, Lewis, Randall, Stutson and Wilson—11.

NAYS—Messrs. Ankeny, Archbold, Backus, Bennett, Blocksom, Byers, Burns, Cronise, Eaton, Emrie, Evans, Ewing, Graham, Hastings, Hopkins, Johnson, King, Reemelin, Scott, Spindler, Wheeler, Winegarner and Speaker—23.

So said amendment was disagreed to.

House second amendment was also disagreed to.

The question then being on agreeing to the House third amendment, viz :

In section 1, line 42, strike out, "to the counties of Logan and Hardin, one representative; to the counties of Union and Marion, one representative; and to the four counties, one senator," and insert, "and two representatives; the senator;"

Mr. Archbold demanded the yeas and nays thereon, which were ordered, and resulted—yeas 10, nays 24, as follows :

YEAS—Messrs. Beaver, Claypool, Corwin, Hastings, Horton, Kendall, Lewis, Randall, Stutson and Wilson—10.

NAYS—Messrs. Ankeny, Archbold, Backus, Bennett, Blocksom, Byers, Burns, Cronise, Eaton, Emrie, Evans, Ewing, Graham, Haines, Hamilton, Hopkins, Johnson, King, Reemelin, Scott, Spindler, Wheeler, Winegarner and Speaker—24.

So said amendment was disagreed to.

House 3d, 4th, 5th, 6th and 7th amendments were severally disagreed to.

The question being on agreeing to 8th House amendment, viz:

Strike out lines 37, 38, 39 and 40, of section 1, and insert, "To the counties of Miami, Dark and Shelby, one senator and two representatives; the Senator to be elected in the year eighteen hundred and fifty."

Mr. Scott demanded the yeas and nays, which were ordered, and resulted—yeas 11, nays 22, as follows:

YEAS—Messrs. Beaver, Claypool, Corwin, Hamilton, Hastings, Horton, Kendall, Lewis, Randall, Stutson and Wilson—11.

NAYS—Messrs. Ankeny, Archbold, Backus, Bennett, Blocksom, Byers, Burns, Cronise, Eaton, Emrie, Evans, Ewing, Graham, Haines, Hopkins, Johnson, King, Reemelin, Scott, Wheeler, Winegarner and Speaker—22.

So the question was decided in the negative, and said 8th House amendment was disagreed to.

House 9th and 10th amendments were severally disagreed to.

The question being on agreeing to House 11th amendment, viz:

In section 1, strike out lines 78, 79, 80, 81 and 82, and insert, "To the counties of Fairfield, Perry and Hocking, one senator and three representatives, the senator to be elected in the years one thousand eight hundred and forty-eight and eighteen hundred and fifty."

Mr. Wilson demanded the yeas and nays, which were ordered, and resulted—yeas 6, nays 27, as follows:

YEAS—Messrs. Beaver, Corwin, Kendall, Lewis, Stutson and Wilson—6.

NAYS—Messrs. Ankeny, Archbold, Backus, Bennett, Blocksom, Byers, Burns, Cronise, Eaton, Emrie, Evans, Ewing, Graham, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, King, Randall, Reemelin, Scott, Spindler, Wheeler, Winegarner, and Speaker—27.

So the question was decided in the negative, and House 12th amendment was disagreed to.

House 13th, 14th, 15th, 16th, 17th, 18th and 19th amendments were severally agreed to.

HOUSE JOURNAL, 604.

February 11, 1848.

Message from the Senate:

Mr. Speaker:

The Senate has disagreed to the 1st, 2d, 3d, 4th, 5th, 6th 7th 8th 9th, 10th, 11th and 12th House amendments to Senate bill No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio.

And has agreed to the 14th, 15th, 16th, 17th, 18th and 19th House amendments to the same.

Attest:

ALBERT GALLOWAY, Clerk.

On motion of Mr. Drake,
Senate bill No. 70 was laid on the table.

February 12, 1848.

On motion of Mr. Anthony,
The House took up the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio.

The same gentleman moved that the House reconsider the vote by which it passed said bill.

On motion of the same gentleman,
Said motion was laid upon the table.

On motion of the same gentleman,
Said bill was recommitted to a select committee of three—Messrs. Anthony, Warren and Breck.

On motion of Mr. Anthony,
The House took up the motion heretofore made by him, to reconsider the vote by which it passed the bill (S. No. 70) to fix and apportion the representation of the General Assembly of Ohio.

The same gentleman then asked leave to withdraw said motion,

Whereupon, the question being, Shall leave be granted?

Upon that question the yeas and nays being demanded and ordered, resulted—yeas 32, nays 30.

Those who voted in the affirmative were—

Messrs. Anthony, Atherton, Bain, Blake, Brainard, Breck, Crothers, Culbertson, Dodds, Drake, Farrington, Greene, Hardesty, Haynes, Kimball, Lawrence, Matthews, McLean, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Voris, Westen and Wilson—32.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Converse, Coolman, Corwin, Cotton, Cock, Coe, Elliott, Fristoe, Huston, Johnston, Kennedy, Landis, Lyle, Morrow, Musgrave, McKinney, Noble, Norris, Patton, Potter, Shaw, Smith of *Hamilton*, Totten, Vorhes, Warren, Williams of *Columbiana*, and Speaker.

So the question was decided in the affirmative, and said motion was withdrawn.

Mr. Anthony, from a select committee, reported back the bill, (S^c No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio, and the pending amendments.

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On motion of Mr. Drake,
Said bill with the amendments was recommitted to a select committee of one—Mr. Drake.

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Message from the Senate:
Mr. Speaker:
The Senate has reconsidered its vote on House amendments to Senate bill No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

ALBERT GALLOWAY, Clerk.

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The House receded from its 1st and 2d amendments and insisted upon the remaining amendments.

Message from the Senate.
Mr. Speaker:
The Senate requests the return of S. No. 70, fixing the apportionment of the General Assembly.

Attest:

ALBERT GALLOWAY, Clerk.

The House acceded to the request of the Senate for the return of S. No. 70.

The rules of the House were suspended.

Mr. Drake, from a select committee reported back the bill (S. No. 70) and pending amendments.

SENATE JOURNAL, 548.

Message from the House of Representatives.
Mr. Speaker:
The House accedes to the request of the Senate for the return of the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

H. A. SWIFT, Clerk.

Mr. Bennett moved that the Senate reconsider its votes on House amendments to S. No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio.

Mr. Reemelin rose to a question of order, which he reduced to writing in the words following, viz:

“ That a motion to reconsider a vote upon amendments is not in order while the fact is announced to the Senate that the House has reconsidered its vote upon the passage of the bill, and has therefore withdrawn the very amendments upon which it is proposed to get the Senate to reconsider, and while the bill itself is not in possession of the Senate.”

On motion of Mr. Wilson,

The motion to reconsider said votes, and said question of order were laid upon the table.

Mr. Wilson moved to suspend the rules, to take up S. No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio.

Mr. Reemelin demanded the yeas and nays thereon, which were ordered, and resulted—yeas 19, nays 16, as follows:

YEAS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

NAYS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

So the rules were suspended.

Said bill was then taken up.

The question was then on agreeing to House amendments to said bill.

House 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th amendments were severally disagreed to.

House 13th, 14th, 15th, 16th, 17th, 18th and 19th amendments were severally agreed to.

HOUSE JOURNAL, 604.

Message from the Senate.

Mr. Speaker :

The Senate has disagreed to the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th amendments, and agreed to the 13th, 14th, 15th, 16th, 17th, 18th and 19th amendments of the House to the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

ALBERT GALLOWAY, Clerk.

605.

On motion of Mr. Drake,

The House receded from its first and second, and insisted upon its remaining amendments to the Senate bill No. 70.

Message from the Senate.

Mr. Speaker :

The Senate has reconsidered their vote on the House amendments to Senate bill No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

ALBERT GALLOWAY, Clerk.

SENATE JOURNAL, 560.

Message from the House of Representatives.

Mr. Speaker :

The House recedes from its first and second, and insists upon its remaining amendments to the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

H. A. SWIFT, Clerk.

Mr. Ewing moved to lay said Senate bill No. 70 upon the table, and demanded the yeas and nays thereon, which were ordered, and resulted—yeas 16, nays 19, as follows:

YEAS—Messrs. Ankeny, Archbold, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Reemelin, Scott, Spindler, Wheeler and Winegarner—16.

NAYS—Messrs. Backus, Beaver, Bennett, Claypool, Corwin, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson, Wilson and Speaker—19.

So the motion was lost.

Mr. Lewis moved that the Senate recede from its disagreement to third House amendment to said bill.

Mr. Backus demanded a call of the Senate : which was had.

Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Wheeler and Winegarner were absent.

The Sergeant-at-arms was despatched for the absentees.

“ In obedience to the within warrant, I waited upon each of the Senators named in said warrant. I found all of them at room No. 18, of the American Hotel, except Mr. Evans ; he was at his room. They all refused to return to the chamber of the Senate, Mr. Evans included ; and all of them united in making the annexed printed slip their answer to the warrant of the Speaker of the Senate.

“ C. DOWNING,

“ *Sergeant-at-arms of the Senate.*

“ February 16, 1848.”

"HON. O. B. GODDARD,

"*Speaker of the Senate :*

"Please present the following to the body over which you preside as our answer :

"The apportionment bill is now in the possession of the Senate, and by acceding to the amendments of the House, the majority on this floor can pass it into a law in a few minutes.

"The undersigned look upon that bill, containing as it does provisions for the division of one of the counties of this State, as a daring infraction upon the constitution, and a violation of all established usages. We look upon it as unjust and unfair, and intended to perpetuate, at the expense of justice and right, a party in power shown to be in a minority at the late election, and one especially in a minority on the great issues of our day, the questions connected with the existing war with Mexico.

"We have waited patiently for a sense of returning justice, but have done so in vain. The party now in power have been deaf to our demands of justice—they have been deaf to the requirements of the constitution. That constitution is about to be violated, and no longer can we tamely sit by and see that outrage consummated. No alternative is now left us except to leave our seats, or remain and witness the consummation of that act. That alternative has been forced upon us. We have made our election to stand by the constitution. Were we to choose the other, and permit you to pass this bill, we would be *particeps criminis* to the violation, even though we recorded our names against it. We can prevent this violation of the constitution; and if we should not, an equal share of crime would rest upon us. This we cannot suffer.

"To divide a county for Representatives and Senators, and to apportion one part of the county to one legislative district and part of it to another, is a plain act of revolution on the part of the majority who attempts it; it is a fundamental change of our political organization plainly forbidden by the constitution. No member can occupy a seat in the General Assembly, unless voted for by the citizens of a whole undivided county.

"Such a revolution we must resist by all the means in our power. If our constitution no longer protects us, we must protect ourselves.

"We do not break up the law-making power of the government, as was the case with the whigs in 1842, for we remain here and are willing to assist in perfecting all necessary and constitutional legislation; but we cannot remain spectators of a wanton violation of the constitution.

"If the members who have passed the apportionment bill through its different stages, until but a single question remains to be taken ere it becomes a law, will purge it of its constitutional objections, and will make it bear even the semblance of an "*honest* apportionment," with reference to other districts, we will cheerfully return to our seats and vote upon its passage. If they should make their election not to do so, then we are willing to return and assist in the other legislation

necessary to a finishing up of the work of the session, but not to violate a plain provision of the constitution, which we have sworn in your presence, and in the presence of each other, to support. The course we have elected to pursue has been calmly weighed and considered. We believe it the easiest, surest, and safest mode of preventing an unconstitutional act from being passed. If sustained by the freemen we represent, we shall feel grateful and happy; if not, "we find in the motives which impel us ample grounds for contentment and peace."

"ANDREW H. BYERS,
 "JAMES H. EWING,
 "JAMES B. KING,
 "SABIRT SCOTT,
 "J. R. EMRIE,
 "JESSE WHEELER,
 "JOHN GRAHAM,
 "HENRY CRONISE.

"P. B. ANKENY,
 "CHARLES REEMELIN,
 "SAMUEL WINEGARNER,
 "FISHER A. BLOCKSOM,
 "EDSON B. OLDS,
 "BARNABAS BURNS,
 "BENJAMIN EVANS."

On motion of Mr. Stutson,
 The Senate adjourned.
 Attest :

ALBERT GALLOWAY, Clerk.

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The Seargent-at-arms having appeared, reported, in writing, that he could not find any of the absentees but two, viz: Messrs. Byers and Ewing, who refused to return.

On motion of Mr. Corwin,
 The Senate adjourned.

Attest :

ALBERT GALLOWAY, Clerk.

February 15, 1848.

Prayer by the Rev. Mr. Chaney.

The Speaker directed a call of the Senate; which was had.

Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Scott, Wheeler and Winegarner, were absent.

The Seargent-at-arms was despatched for the absentees by the Speaker.

The Seargent-at-arms having appeared, made the following return, in writing :

"February 15, 1848.

"Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Scott, Wheeler and Winegarner, were by me found in room No. 18, at the American Hotel, and noti-

fied that a call of the Senate had been had. They all declined to attend.

“ C. DOWNING,
“ *Sergeant-at-arms of the Senate.*”

On motion of Mr. Lewis,
The Senate adjourned.
Attest :

ALBERT GALLOWAY, Clerk.

February 16, 1848.

The Speaker directed a call of the Senate ; which was had.

Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Wheeler and Winegarner were absent.

Mr. Backus offered for adoption the following resolution :

Resolved, That the Speaker of this body be and is hereby authorized and requires to issue his warrant, directed to the Seargent-at-arms of this body, commanding him forthwith to wait upon each of the members of this body shown by the call of the Senate to be absent therefrom, and to notify such absent members, respectively, that their presence in the Senate chamber is forthwith required.

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Mr. Archbold demanded the yeas and nays thereon, but subsequently withdrew the demand.

Said resolution was then agreed to.

Whereupon the Speaker issued the following warrant :

“ To COLUMBIA DOWNING, Esq.,

“ *Seargent-at-arms of the Senate :*

“ It appearing, upon a call of the Senate, that the following named Senators are absent, to wit; Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Wheeler and Winegarner ; you are therefore required, in pursuance of a resolution passed by the Senators present, forthwith to wait upon each of the above named members of this body, and notify him that his presence in the Senate chamber is forthwith required.

“ Given under my hand in the Senate chamber, this sixteenth day of February, eighteen hundred and forty-eight.

“ CHARLES B. GODDARD,

“ *Speaker of the Senate.*”

The Seargent-at-arms having appeared, made the following return in writing:

February 17, 1848.

Prayer by the Rev. Mr. Hitchcock.

The Speaker directed a call of the Senate ; which was had.

Messrs. Ankeny, Bennett, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Graham, Haines, King, Olds, Reemelin, Scott, Wheeler and Winegarner, were absent.

On motion of Mr. Backus,

Resolved, That the Speaker of this body be and is hereby authorized and required to issue his warrant, directed to the Sergeant-at-arms of this body, commanding him forthwith to wait upon each of the members of this body shown by the call of the Senate to be absent therefrom, and to notify such absent members, respectively, that their presence in the Senate chamber is forthwith required.

On motion of Mr. Randall,

Mr. Bennett was excused.

On motion of Mr. Beaver,

Mr. Haines was excused.

The Speaker issued the following warrant :

“ To COLUMBIA DOWNING, Esq.,

“ *Sergeant-at-arms of the Senate :*

“ It appearing, upon a call of the Senate, that the following named Senators are absent, to wit: Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Graham, King, Olds, Reemelin, Scott, Wheeler and Winegarner, you are, therefore, required, in pursuance of a resolution passed by the Senators present, forthwith to wait upon each of the above named members of this body, and notify him that his presence in the Senate chamber is forthwith required.

“ Given under my hand in the Senate chamber, this seventeenth day of February, eighteen hundred and forty-eight.

“ C. B. GODDARD,

“ *Speaker of the Senate.*”

The Seargent-at-arms having appeared, made the following return in writing :

“ In obedience to the above, I waited upon each of the above named Senators at the American Hotel, and received as their reply to the above warrant, the following paper hereto attached.

“ C. DOWNING,

“ *Sergent-at-arms of the Senate.*

“ February 17, 1848.”

"No. 18, AMERICAN HOTEL,

"*Thursday, Feb. 17.*

"We refer the Speaker to our reply of yesterday as our answer to-day.

"P. B. ANKENY,
"ANDREW H. BYERS,
"HENRY CHRONISE,
"BENJ. EVANS,
"JAMES B. KING,
"CHAS. REEMELIN,
"JESSE WHEELER,

"FISHER A. BLOCKSOM,
"BARNABUS BURNS,
"J. R. EMRIE,
"JOHN GRAHAM,
"EDSON B. OLDS,
"SABERT SCOTT,
"SAMUEL WINEGARNER."

On motion of Mr. Corwin,
The Senate adjourned.

Attest :

ALBERT GALLOWAY, Clerk.

FEBRUARY 18, 1848.

The Speaker directed a call of the Senate.

Messrs. Ankeny, Blocksom, Bennett, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, Haines, King, Olds, Reemelin, Scott, Wheeler and Winegarner were absent.

On motion of Mr. Stutson,

Messrs. Bennett and Haines were excused.

On motion of Mr. Backus,

Resolved, That the Speaker of the Senate be and he is hereby required to issue his warrant directed to the Sergeant-at-arms of the Senate, commanding him, forthwith, to wait upon the Senators shown by the call of the Senate to be absent, and to notify them respectively, that their presence in the Senate is forthwith required.

Whereupon the Speaker issued his warrant, in the words following, to wit :

"To COLUMBIA DOWNING, Esq.,

"*Serjeant-at-Arms of the Senate :*

"It appearing, upon a call of the Senate, that the following named Senators are absent, to wit : Messrs. Ankeny, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, King, Olds, Reemelin, Scott, Wheeler and Winegarner ; you are, therefore, required in pursuance of a resolution passed by the Senators present, forthwith to wait upon each of the above named members of this body and notify him that his presence in the Senate chamber is required.

"Given under my hand, in the Senate chamber, this 18th day of February, A. D., 1848.

"CHAS. B. GODDARD,
"Speaker of the Senate."

Mr. Potter moved that the House reconsider the vote by which it adopted the resolution offered this morning by Mr. Park, relative to receding from the amendments of the House to the Senate bill (No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio.

The Speaker (Mr. Truesdale being temporarily in the chair,) decided that said motion was not in order, that gentleman (Mr. Potter) not having voted with the majority upon the question, "Shall said resolution be adopted?"

From which decision Mr. Potter appealed.

Whereupon the question being, "Is the decision of the Chair correct?"

Upon that question the yeas and nays being demanded and ordered, resulted—yeas 33, nays 24.

Those who voted in the affirmative were—

Messrs. Atherton, Bain, Blake, Brainerd, Breck, Crothers, Conklin, Dodds, Drake, Farrington, Greene, Harrington, Haynes, Holcomb, Huston, Kimball, Lawrence, Matthews, McLean, Nigh, Park, Pennington, Perry, Phillips, Randall, Robinson, Russell, Seward, Taylor, Trimble, Truesdale, Westen and Wilson—33.

Those who voted in the negative were—

Messrs. Armstrong, Brackley, Brewer, Clark, Coolman, Corwine, Cock, Coe, Elliott, Johnston, Landis, Lyle, Morrow, Musgrave, McKenney, Patton, Potter, Shaw, Smith of *Brown*, Smith of *Hamilton*, Totten, Vorhes, Warren and Williams of *Columbiana*—24.

So the question was decided in the affirmative, and the decision of the Chair sustained.

On motion of Mr. Smith of *Hamilton*,

The House adjourned.

Attest:

H. A. SWIFT, Clerk.

566.

With which warrant the Sergeant-at-arms was despatched for the above named absentees.

The Sergeant-at-arms, having appeared, made the following return:

"In obedience to the above warrant, I waited on each of the above named Senators, (except Mr. Wheeler, who is supposed to be absent from the city.) I found them at room No. 18, of the American Hotel, and received as their reply to the above warrant, the paper hereto attached.

"C. DOWNING,
Sergeant-at-arms of the Senate.

"February 18, 1848."

" AMERICAN HOTEL, No. 18,
 " *February 18.*

"The Speaker is most respectfully referred to our declaration, transmitted on the 16th inst.

" EDSON B. OLDS,
 " SAMUEL WINEGARNER,
 " B. EVANS,
 " CHAS. REEMELIN,
 " FISHER A. BLOCKSON,
 " HENRY CRONISE,
 " SABIET SCOTT,

" JAMES B. KING.
 " ANDREW H. BYERS,
 " J. R. EMBIE,
 " P. B. ANKENY,
 " JAMES H. EWING,
 " JOHN GRAHAM,
 " BARNABUS BURNS."

The following message was received from the House of Representatives, and read at the Clerk's desk by the Sergeant-at-Arms of that body :

Message from the House of Representatives.

Mr. Speaker :

The House has receded from all its amendments, heretofore insisted upon, to the bill (S. No. 70) to fix and apportion the representation of the General Assembly of the State of Ohio.

Attest :

H. A. SWIFT, Clerk.

The Sergeant-at-arms of the House of Representatives again appeared, and announced messages from that body ; which were received.

Mr. Olds rose to a question of order, viz :

That the Senate, when a quorum was not present, could not receive a message from the House of Representatives.

The Speaker decided that it was in order for the Senators present to receive a message.

Mr. Olds appealed from the decision of the Speaker.

The question being, " Shall the decision of the Speaker stand as the judgment of the Senators present?"

Mr. Olds demanded the yeas and nays thereon, which were ordered, and resulted—yeas 15, nays 1, as follows :

567

YEAS—Messrs. Backus, Claypool, Corwin, Eaton, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson and Wilson—15.

NAYS—Mr. Olds—1.

So the question was decided in the affirmative, and the decision of the Speaker, that the Senators present could receive a message, was sustained.

Mr. Olds gave notice of his intention to enter his protest upon the Journal of the Senate against the foregoing.

The Speaker directed the Clerk to record such notice upon the Journal.

Mr. Olds demanded whether such notice was in order, there being no quorum present.

The Speaker decided that Mr. Olds was in order in giving such notice.

Mr. Olds appealed from the decision of the Speaker.

The question being, "Shall the decision of the Speaker stand, as the judgment of the Senators present?"

Mr. Olds demanded the yeas and nays, which were ordered, and resulted—yeas 6, nays 1, as follows:

YEAS—Messrs. Corwin, Hopkins, Johnson, Judy, Stutson and Wilson—6.

NAYS—Mr. Olds—1.

So the question was decided in the affirmative, and the decision of the Speaker, that Mr. Olds was in order in giving such notice of protest, was sustained.

On motion of Mr. Lewis,

The Senate adjourned.

Attest:

ALBERT GALLOWAY, Clerk.

February 19, 1848.

The Speaker directed a call of the Senate.

Messrs. Ankeny, Bennett, Blocksom, Byers, Burns, Cronise, Emrie, Evans, Ewing, Graham, Reemelin, Scott, Wheeler and Winegarner were absent.

On motion of Mr. Hopkins,

Mr. Bennett was excused.

Mr. Lewis moved that the Sergeant-at-Arms be required to wait upon each of the absent members, and notify him that his presence is forthwith required in the Senate chamber.

The Senator from Pickaway, Mr. Olds, rose and said that the apportionment bill had passed the Senate and been sent to the House of Representatives, had been amended there, and returned to the Senate, where some of the amendments had been agreed to and some disagreed to; that the bill was then returned to the House, which re-redeed from one of its amendments, and insisted upon others, and returned the bill to the Senate.

The Speaker interrupted the Senator and called him to order, as making remarks not relevant to the question under consideration.

The Senator said his object was to show why the absent Senators were not here, but the Speaker persisted in his decision that the Senator was not in order.

From which decision the Senator from Pickaway appealed.

On motion of Mr. Wilson,

The appeal was laid upon the table.

Mr. Olds moved that the absent members be excused.

The Speaker stated the motion.

Mr. Olds then proceeded to speak to the motion, to show why they should be excused.

Mr. Kendall called Mr. Olds to order.

The Speaker required that the point of order should be reduced to writing.

Mr. Kendall thereupon submitted it in writing, as follows :

Mr. Olds having stated that " the absent Senators were not present, because they had great confidence in your (the Speaker's) honor. They had great confidence that, under the standing rules of the Senate and the constitution of Ohio, you would not sign that bill." Which words Mr. Kendall affirms to be disorderly, as casting imputation of dishonorable conduct upon the Speaker of the Senate.

The Speaker decided that Mr. Olds had been out of order.

Mr. Olds appealed from the decision of the chair.

Mr. Wilson moved to lay the appeal on the table.

Mr. Olds demanded the yeas and nays, which were ordered, and resulted—yeas 16, nays 3, as follows :

YEAS—Messrs. Backus, Beaver, Claypool, Eaton, Haines, Hamilton, Hastings, Hopkins, Horton, Johnson, Judy, Kendall, Lewis, Randall, Stutson and Wilson—16.

NAYS—Messrs. Archbold, King and Olds—3.

So the appeal was laid upon the table.

Mr. Lewis, on leave, withdrew the motion offered by him.

On motion of Mr. Archbold,

The Senate adjourned until 3 o'clock P. M., of this day.

THREE O'CLOCK, P. M.

The Speaker directed the reading of the Journals of the 14th, 15th, 16th, 17th and 18th of February.

Thereupon said Journals were read.

HOUSE JOURNAL, 627.

Mr. Park offered the following resolution, which was adopted :

Resolved, That as touching the amendments of the House of Representatives to Senate bill No. 70, to fix and apportion the representation of the next General Assembly of the State of Ohio, the House recedes from all its amendments to which the Senate has not agreed, and that the Senate be informed thereof, forthwith.

628

The standing committee on Enrollment have compared the following bills, and find the same correctly enrolled :

16—APP. S. J.

S. No. 70; An act to fix and apportion the representation of the General Assembly of the State of Ohio.

S. No. 128; To correct a clerical error in a certain other act.

S. No. 150; To appoint Albert Morley, trustee of Laura Calkins.

S. 137; To amend the act entitled "an act to provide for the election of Electors of President and Vice President of the United States," passed Feb. 15th, 1820.

SENATE JOURNAL, 566.

S. No. 70; To fix and apportion the representation of the General Assembly of the State of Ohio.

Attest:

H. A. SWIFT, Clerk.

Said enrolled bills were severally signed by the Speaker of the Senate on yesterday.

575

The standing committee on Enrollment have compared the following enrolled bills and resolutions, and find the same truly enrolled:

582

S. No. 70; An act to fix and apportion the representation of the General Assembly of the State of Ohio.

JOURNAL
OF THE
INVESTIGATING COMMITTEE.

SATURDAY, MARCH 17, 1849.

Committee met in Senate chamber ; present, Senators Dimmock, Beaver and Lewis.

Mr. Dimmock moved that Charles Scott be summoned to appear before the committee, as a witness, and that he bring with him the original manuscript copy of the journals of both branches of the last General Assembly, if in his possession.

Also, Samuel Galloway, William B. Fairchild, C. B. Flood, James Noble, and Edson B. Olds. Subpoenas ordered.

Committee adjourned.

A. G. DIMMOCK, *Ch'n.*

MONDAY, MARCH 19, 3 o'clock.

Committee met at No. 34, American Hotel.

Messrs. Beaver and Lewis moved that a subpoena be issued for E. Burke Fisher ; and Mr. Dimmock moved one for Samuel Medary. Agreed to, and Subpoenas ordered.

Mr. Beaver moved for a subpoena for E. F. Drake ; and Mr. Dimmock one for C. L. Valandigham. Agreed to.

Mr. Dimmock moved that John Kershaw be employed as clerk to the committee. Agreed to.

Mr. Beaver moved for a subpoena for C. B. Goddard, Franklin T. Backus, F. Corwin, William Kendall, C. Downing, E. Archbold, A. H. Byers, and B. Evans. Agreed to.

Mr. Dimmock moved for a subpoena for A. T. Holcomb, George Hardesty, Miller Pennington, H. G. Blake, and A. J. Bennett. Agreed to.

On motion of Mr. Beaver,

Committee adjourned to 9 o'clock to-morrow morning.

A. G. DIMMOCK, *Ch'n.*

MARCH, 20, 1849.

Appointed meeting of the committee, at No. 106 of the American Hotel. Present, A. G. Dimmock, John F. Beaver, with clerk and sergeant-at-arms.

At the instance of Mr. Dimmock, Alexander Patton, Esq., a justice of the peace of Franklin county, appeared to qualify witnesses. The first witness sworn was Charles Scott.

Question by Mr. Dimmock. Did you print the journals of the last General Assembly?

Answer. I did.

Question by the same. Did you bring with you the original manuscript copies of the same?

Ans. I did not.

Ques. by the same. Why did you not bring them?

Ans. The reason is that they have been given out in the printing office for wrapping paper, and it was never deemed important for printers to keep them.

Ques. by the same. How long is it since they were given out for wrapping paper?

Ans. About the first of January; since the organization of the Legislature.

Ques. by the same. Did any one call upon you after the copies were first given to you to print, to get them back to make any alterations?

Ans. Not to my recollection.

Ques. by the same. Do you know, of your own knowledge or by conversation with your foreman, or hands about your office, that any alterations were made after the same came into your possession?

Ans. I do not. The foreman who had them in charge is gone to California. He was a very particular printer and generally kept such things under lock and key and only gave them out as needed for copy. The then assistant foreman, Mr. M. H. McCormock, and who assisted in reading the proof, is now my foreman.

Ques. by the same. How long is it since your foreman went to California?

Ans. Not long. He joined Mr. Weller's company, as I understood, at Cincinnati.

Ques. by Mr. Beaver. State whether or not you have been printer of the journals for a number of years before, and whether or not it was customary to preserve manuscript copies of the journals.

Ans. I have printed the journals of the House for the last three sessions, and the journals of the Senate for the sessions of 1845-6 and 1847-8, and in no instance were the manuscripts preserved for any length of time.

Ques. by Mr. Dimmock. Do you know how long you have preserved the journals on other occasions?

Ans. On former occasions not so long as on the last.

CHAS. SCOTT.

On motion of Mr. Beaver,

A subpoena *duces tecum* was issued for Samuel Galloway, Secretary of State, to appear before the committee, and bring with him the manuscript copies of the journals of the Senate and House of Representatives of the last session of the General Assembly.

Mr. E. Burke Fisher was qualified to testify before the committee, by Alexander Patten, Esq., justice of the peace as aforesaid, and examined.

Ques. by Mr. Beaver. Was you one of the assistant clerks of the House of Representatives at the session of 847-8?

Ans. I was.

Ques. by the same. Do you know of any alterations made upon the journal of the House, by the principal or any other clerk? and if so, by whom? or, did you make any yourself?

Ans. I do not. I made none myself, nor do I believe any were made.

Ques. by the same. Is this the journal kept by you? (The journal was here handed Mr. Fisher by Mr. Galloway.)

Ans. This is the manuscript journal kept by me and under my supervision.

Ques. by the same. Is it a fair and correct copy of the sheets furnished from the clerk's desk daily, as the session proceeded?

Ans. It is, to the best of my knowledge.

Ques. by Mr. Dimmock. Do you recollect recording the proceedings of the House of the 12th of February, 1848?

Ans. Part of the proceedings of 12th Feb. was recorded by me, part by the engrossing clerk, Mr. Baldwin, of Logan county, and all under my supervision as journal clerk. I am satisfied that the journal is truly recorded, and I knew of no alteration made, and think no alteration material could have been made without my detecting it.

After the sheets were recorded into this book they were delivered over to the State printer. No part of this journal was made up from printer's sheets. The sheets were recorded before they were sent to the printer.

Ques. by the same. Were you present in the House at the time Mr. Anthony made the motion to reconsider the vote on Senate bill No. 70?

Ans. I was at the clerk's desk during the most of the afternoon session.

Ques. by the same. What was the result of that motion?

Ans. I cannot say. In the confusion of motions consequent upon Gen. Anthony's motion, there was so much to embarrass the attention, I can only recollect Gen. Anthony's proposition to withdraw his motion to reconsider.

E. BURKE FISHER.

Committee, at 6 o'clock, took a recess until half past seven this evening.

7½ O'CLOCK, TUESDAY EVENING, March 20, 1849.

All members of the committee present.

Mr. Franklin Corwin appeared and was qualified by Alexander Patton, Esq., justice of the peace as aforesaid, to give testimony before the committee. Mr. Corwin was examined as follows :

Question by Mr. Dimmock. Did you and other Senators, during the last session of the General Assembly, meet in tin-pan, or caucus, with the members of the House, relative to the passage of Senate bill No. 70? If so, were you present when the resolution introduced by Father Park was under discussion? If present at that time, who was selected to introduce the resolution?

Ans. According to my recollection, the apportionment law of last winter was never made the subject of discussion or examination by any such caucus as is referred to in the question. And I never was present at any such caucus, to the best of my recollection, where that bill was alluded to, except incidentally. Indeed, the understanding of the whig members, as I believe, was, from the beginning of that session, that that bill should not be considered in caucus. After the fifteen democratic Senators had left their seats, the bill may have been the subject of conversation in the meetings of the whigs, but only, as I believe, incidentally, as connected with the absence of Senators. As to the resolution introduced by Mr. Park, in the House, the first intimation I had of that resolution was when the sergeant-at-arms of the House announced on the floor of the Senate its passage by the House.

Ques. by the same. You say the sergeant-at-arms read a message on the floor of the Senate, announcing the passage of father Park's resolution by the House. What effect had that announcement on Senators, and especially on yourself? Was it a usual occurrence for that officer to read messages? and do you consider the reading of a message from one branch of our Legislature to the other, an official notice of the House sending it, and in accordance with the joint rules?

Ans. I was somewhat surprised and vexed when the announcement was made, by the sergeant-at-arms of the House, referred to in my former answer, for I thought that the Senators should have been consulted as to the propriety of that step, before it was adopted. It is not usual, I believe, for the sergeant-at-arms of the House to read messages to the Senate.

Ques. by Mr. Beaver. Why is it not usual for the sergeants-at-arms to read messages at the bar of each house?

Ans. When there is a quorum present the messages are handed to the clerks, and read by them, and hence there is no necessity or propriety in their being read by the sergeant-at-arms who happens to be the bearer of the message.

Ques. by the same. Was there a quorum present when the message you refer to was read?

Ans. No.

Ques. by Mr. Dimmock. Is there any necessity, or propriety, or

legality in reading messages or doing any other business without a quorum ?

Ans. I suppose a message may be received or sent by the Senate to the House when there is not a quorum present, for it may become necessary for one house to advise the other of the fact, that the one sending the message is without a quorum.

Ques. by the same. If a message may be sent or received by either house without a quorum, what necessity or propriety is there in having them read by the sergeant-at-arms ?

Ans. I do not know that any such necessity exists.

FRANKLIN CORWIN.

Committee adjourned until 9 o'clock to-morrow morning.

A. G. DIMMOCK, *Ch'n.*

WEDNESDAY, MARCH 21, 1849.

Committee met at 9 o'clock.

Present, Mr. Dimmock, Mr. Lewis, Mr. Beaver, clerk and sergeant-at-arms.

Charles B. Flood, Benj. Evans, Harrison G. Blake were all severally sworn by Alexander Patton, Esq., justice of the peace as aforesaid, to testify before the committee, as, also, was Elias F. Drake, Esq.

On motion of Mr. Beaver,

A subpoena for H. C. Whitman was issued.

On motion of Mr. Dimmock,

Subpoenas were issued for John G. Breslin, Joseph S. Hawkins, C. D. Taggart, Charles Reemelin, and Elah Park.

On motion of Mr. Beaver,

A subpoena was issued for Gen. Charles Anthony.

Mr. Benjamin Evans examined.

Questions by Mr. Beaver. Were you a Senator in the General Assembly of 1847-8? If so, from what county?

Answer. I was a Senator from Brown county.

Ques. by the same. Did you leave your seat with other Senators, on or about the 14th Feb., 1848, while the Senate was in session? If so, state for what object you did leave your seat.

Ans. I did leave my seat with other Senators. The object was to defeat the passage of what I believed to be an unjust and unconstitutional apportionment bill, being Senate bill No. 70.

Ques. by the same. Had you, with other Senators or members of the House of Representatives, or with both, any previous consultation or understanding in relation to the vacating your seat? If so, state who was present at such consultation, whether Senators or members of the House; and state also, fully, your previous arrangements and objects.

Ans. I had no consultation with other Senators or members of the

House of Representatives, or other persons, previously to my leaving my seat; nor did I make any previous arrangement on that subject; nor did I determine to leave my seat more than ten minutes before I did leave it.

Ques. by the same. Was there at any time citizens, not Senators or members, in consultation with you in your meetings, before or after vacating your seats? If so, state who those persons were, and what was resolved upon by you and them at those meetings, and what part (if any,) they took in relation to the matter?

Ans. I have no knowledge of any others persons, other than senators or representatives, who were consulted by any of the receding senators, previous to or after we left our seats. There were members of the House present with us after we left our seats, but there was no other agreement or arrangement, at any of our meetings, than a determination not to return to our seats until Senate bill No. 70 was disposed of.

Ques. by the same. State whether any person holding office under the federal government counselled or advised you on the subject of leaving your seats, and leaving the Senate or House without a quorum, to prevent the further proceedings of the General Assembly, or either branch of it?

Ans. Col. Samuel Medary and Thomas W. Bartley were with us after we vacated our seats; but I have no knowledge of any of the receding Senators consulting with them, or either of them, upon the subject of returning to our seats, or leaving our seats vacant. Nor have I any knowledge that they, or either of them, gave any advice or counsel on the subject.

Ques. by the same. Do you recollect of the Senator from Wayne (Mr. Byers,) reading a paper immediately preceding your leaving your seats?

Ans. I do.

Ques. by the same. Where was that paper signed, and when did you agree to it?

Ans. I have no knowledge when the paper was signed by any Senator except myself. I signed the paper at the "Statesman office" after I left my seat.

Ques. by the same. Do you know if it is the same, or in substance the same, as now appears on Senate Journal, pages 562 and 563?

Ans. I believe it to be the same in substance.

Question by Mr. Dimmock. Had you any other motive in absenting yourself from your seat than to preserve inviolate the constitution, and prevent the equal rights of the people from being destroyed?

Ans. No.

Ques. by the same. How long after you vacated your seat was it that Col. Medary and Mr. Bartley visited you?

Ans. I have no distinct recollection. I believe it was on the succeeding day.

B. EVANS.

Mr. James Noble appeared and was qualified by Alexander Patton,

Esq., Justice of the Peace, as aforesaid, to testify before the committee, and underwent the following examination :

Question by Mr. Dimmock, Were you the enrolling clerk of the Senate at the last session of the General Assembly ?

Ans. I was not the enrolling clerk of the Senate ; I was the enrolling clerk of the House.

Ques. by the same. Did you enroll Senate bill No. 70 ? If so, at what time was it enrolled ?

Ans. I did enroll Senate bill No. 70. I cannot now recollect the date when I did enroll it.

Ques. by the same. Who placed it in your hands for enrollment, and by whose order did you enroll it ?

Ans. The Clerk of the Senate, Mr. Galloway, placed it in my hands in the clerk's room of the Senate chamber, and wished me to enroll it with accuracy and despatch.

Ques. by the same. Were there any erasures or interlineations made in the bill after it was enrolled ?

Ans. I think that on the enrolling committee comparing the bill, there occurred a place where there was a repetition of a few words. The repetition was in the engrossed bill, and I followed the copy in enrolling it. By order of the committee I made the proper corrections.

Ques. by the same. After the bill was enrolled, into whose hands did you place it ?

Ans. I placed it in the hands of Mr. Galloway, the Clerk of the Senate.

Ques. by the same. Was the bill enrolled by you previous to the passage of Father Park's House Resolution ?

Ans. I think it was.

Ques. by the same. Had Senate bill No. 70 passed, so as to be ready for enrollment, previous to the adoption of Mr. Park's resolution receding from certain House amendments ?

Ans. Mr. Galloway requested me to enroll the bill as it had passed the Senate.

Ques. by the same. Was that the first bill enrolled by you, at the last session, previous to its passage ?

To which question Mr. Beaver objected, and called for the yeas and nays.

The question being, shall the question be answered, was decided, yeas 1, Mr. Dimmock, nays 2, Messrs. Beaver and Lewis.

So the question was decided in the negative.

Question by Mr. Dimmock. Did you enroll any other Senate bill during the last session ?

Ans. I cannot now recollect. I have enrolled Senate bills, although at the time I was employed as the enrolling clerk of the House. I have acted as enrolling clerk to the House for several sessions, and while acting in that capacity for the House, I have enrolled a number of bills for the clerk of the Senate. Whether I did so at the last session or not I cannot remember distinctly, but I think it likely I did.

Question by Mr. Beaver. Who were present when the enrolled bill was examined?

Ans. Mr. Hastings of the Senate, and Mr. Breck of the House.

Ques. by the same. Was the bill examined and compared before the passage of Mr. Park's resolution, or was it after?

Ans. My impression is that it was before.

Question by Mr. Lewis. At any time while you were enrolling clerk, did you ever enroll any bills previous to their passage?

Ans. I have, in cases of urgency, when it was known that no amendments would be made in the engrossed bills. I have often enrolled House bills that had passed the Senate and came down to the House, in messages, prior to the message informing the House of the fact having been read.

Question by Mr. Dimmock. Did you enroll those bills by order of chief clerk?

Ans. I did, by his permission.

JAMES F. NOBLE.

The committee, at 1 o'clock, took a recess until half past 2 o'clock.

HALF PAST TWO O'CLOCK.

Committee met again; present, Messrs. Dimmock, Lewis, and Beaver, and the Clerk and Sergeant-at-Arms.

On motion of Mr. Dimmock,

A subpoena was issued for Jno. R. Knapp, Jr.

C. B. Flood appeared and was examined as follows:

Question by Mr. Dimmock. Were you reporter for the "Ohio Statesman" during the session of the last General Assembly, in the Senate? If so, state in your own way all you know about the mutilation of the Journal of either House?

Ans. I was reporter to the Ohio Statesman in the last Senate. On the 12th of February, 1848, a message was sent to the Senate from the House of Representatives announcing that the House of Representatives had reconsidered its vote on the passage of Senate bill No. 70, more familiarly known as the apportionment bill of that session. Since the publication of the Journals, I have searched in vain for any mention of that message in the printed Journals of the Senate. My recollection of the fact that such a message was received and read, is strengthened by the fact that, on a question of order raised by Mr. Reemelin, and recorded on page 546 of the printed Journal, and which speaks of the reception of the message to which I allude, the Speaker directed the point of order to be reduced to writing; Mr. Reemelin hesitated, and I went to his desk and observed to him that his point of order was well taken, and requested him to reduce it to writing. Mr. Reemelin did so. My recollection is further strengthened by the fact that, in an article published in the Ohio Statesman, on Monday, the 14th, giving a synopsis of the doings of the Legislature during the previous week, and written by myself, the same fact is stated, that a message had been received from the House, announcing the fact that

the House of Representatives had reconsidered its vote on the passage of the apportionment bill. The point of order was reduced to writing, and the article in the Statesman was written and published many weeks previous to the fact being discovered that the message was not on the Journal of the Senate.

Ques. by the same. Are you familiar with the practice of State Printers in disposing of the original manuscript copy of the journals of the two houses, after they have been put in type? If so, do you know how long they have usually been preserved?

Ans. I am not familiar with the custom save as it existed when Col. Medary was State Printer. Then the original manuscripts of the journals were carefully preserved for many years. During the past winter, I noticed a manuscript journal previous the year 1840. I always understood that it was necessary to preserve the copies, but I never knew how long they were kept.

Ques. by Mr. Lewis. For what purpose do you consider it necessary to preserve the manuscript copies of the journals?

Ans. For the protection of the State Printer, who, for an alteration from copy, would be liable for damages. A discrepancy might exist between the manuscript sheets furnished the printer and the journals as written in the book, and this could only be determined by reference to the sheets in the hands of the State Printer, which are in fact the original journals. For this reason it is necessary to preserve them with care.

C. B. FLOOD.

C. D. Taggart, A. H. Byers, John G. Breslin, F. T. Backus, C. B. Goddard, and Samuel Medary, appeared before the committee and were severally qualified by Wm. T. Martin, Esq., a justice of the peace within and for Franklin county, Ohio, to testify before the committee.

EXAMINATION OF SAMUEL MEDARY.

Question by Mr. Dimmock. State to the committee how long you have acted as State Printer, and what has been your custom in regard to preserving the original manuscript copies of the journals after the proceedings had been put in type?

Ans. I was State Printer from the year 1837 to the spring of 1845, when the law under which I had been elected was repealed, being one year previous to the expiration of my last term. As I ordered all legislative manuscripts of documents, journals, &c., to be preserved, I think when the act was repealed I still had the greater portion of them on hand. Some of those of the first years may have been destroyed. My object was to keep them until all probability that they should be called for or examined was passed. In 1846-7 I did the printing of the Senate, and the original files or manuscript were preserved until the present winter.

Question by Mr. Lewis. Were you in consultation at any time with the seceding Senators, during the time they had vacated their seats in the Senate? If so, what course did you advise?

Ans. I knew nothing of the fact that they had resolved to vacate their seats, except by rumor, a few minutes before it took place. I was in no caucus or consultation on the subject. Once after they had vacated their seats I was present, when I understood the subject was to be discussed; but I left the room, I think, before any opinion was expressed, certainly none by myself.

S. MEDARY.

The committee, at 6 o'clock, took a recess to half past 7 o'clock.

HALF PAST SEVEN O'CLOCK, P. M.

Mr. William B. Fairchild appeared and was qualified by Alexander Patton, Esq., Justice of the Peace, as aforesaid, to give testimony before the committee.

EXAMINATION OF C. D. TAGGART.

Question by Mr. Dimmock. During how many sessions have you been assistant clerk of one or the other of the branches of the General Assembly.

Ans. I have been assistant clerk of the House one session, and of the Senate two sessions, and part of a third.

Ques. by the same. In your experience as clerk, did you ever enroll a bill before it was clearly known to have been fully acquiesced in by both branches of the General Assembly, or know of a bill being thus enrolled by any other clerk?

Ans. I never enrolled a bill before it was clearly known to have been fully acquiesced in by both branches, and never knew any other enrolling clerk to do it. I have had more or less to do with the enrolling department every session that I have been assistant clerk, and never knew any thing of the kind to be done.

Question by Mr. Lewis. Did you ever receive from the clerk, at his desk, any bill or bills for the purpose of enrolling before the message containing the same was read?

Ans. I never did. I have been forced to wait during the present session until the message containing the bills had been read before I could get them to enroll. I have never known bills to be enrolled before the message containing them was read. A large number of the bills enrolled this winter have been sent out from the desk to the clerk's room, by the messenger boys and others; and I am not prepared to say whether the message containing them was read first or not. Those that I received from the clerk myself were not delivered to me until the message had been read. So far as my knowledge and experience goes, the practice is universal not to have the bills enrolled until the message had been read.

CHARLES D. TAGGART.

Dr. Edson B. Olds appeared before the committee; and was qualified to testify before the same by Wm. T. Martin, Esq., Justice of the Peace, as aforesaid.

EXAMINATION OF DR. E. B. OLDS.

Question by Mr. Dimmock. Were you a member of the last General Assembly? If so, were you a member of the joint committee on apportionment?

Ans. I was a member of the Senate and one of the joint special committee on apportionment.

Ques. by the same. While on that committee did you examine the apportionment bill, then under consideration? If so, state whether there were calculations made in figures showing the political complexion of the districts.

Ans. Whilst in committee, the chairman of the committee, Senator Wilson, introduced the apportionment bill. There were columns to the bill, in which were placed the number of members from the different districts, those from whig districts in one column, and those from democratic districts in another column.

Ques. by the same. When the bill was printed and laid on the desks of Senators, were these calculations printed with the bill?

Ans. In committee, I moved to have the bill printed for the use of the members of the committee, which was agreed to. When the bill was returned from the printer, the columns showing its political complexion were not printed with bill.

Ques. by the same. Do you recollect the number given to each party? If so, please state it.

Ans. In adding the columns, as the bill lay before me on the table, I made it eighteen majority in the House and six in the Senate, for the whigs. In stating this fact, in a speech at Springfield, Mr. Anthony, who was also a member of the committee, said he thought I was mistaken, as the calculation, he said, gave the whigs only eleven majority in the House and six in the Senate. I am confident, however, that my addition was correct. These calculations were based upon the vote at the October elections in 1847.

Ques. by the same. In your experience in legislation, have you ever known the Sergeant-at-Arms of one branch, to read messages to the other branch, and is such notice to one branch, an official notice, and in order?

Ans. I have never known such practice obtain in Ohio. The joint standing rules governing both houses expressly provide—3d joint standing rule is in these words: "When a message shall be sent by either house to the other, it shall be immediately announced at the bar of the house to which it is sent, by the door-keeper, and shall be, by the bearer, delivered to the Clerk of the other branch, at his desk, *who shall read the same to the house to which it belongs.*" The practice is for the door-keeper of the Senate to announce, "A message from the House," the door-keeper of the House then says, "Mr. Speaker," the Speaker then says, "Sergeant-at-Arms of the House of Representatives," the door-keeper of the House then advances to the desk of the Clerk of the Senate, and to him delivers the message from the House, the Clerk of the Senate then proceeds to read the message.

Ques. by the Mr. Beaver. If a Senate bill be passed, and sent to the House of Representatives, where it is passed with amendments, and the bill and amendments are sent back to the Senate for concurrence, and then the Senate agrees to part of the amendments and disagrees to part, and again the Senate sends the bill, amendments, agreements and disagreements to the House, is a motion to *reconsider* the vote by which the bill passed the House, in order, or is it out of order?

Ans. The House standing rules provide, that a motion to reconsider a vote must be made by a member voting in the majority; in case of an equal vote, then by a member voting in the negative; and such motion to be in order, must be made within the next two days of actual session of the House after such vote was had. Jefferson's Manual, which by the standing rules of the Ohio Legislature, is expressly made parliamentary law, in all cases not provided for in their rules, says: "When a question has been once made, and carried in the affirmative, or negative, *it shall be in order for any member of the majority to move for the reconsideration thereof*; but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, announcement or motion, upon which the vote was taken, shall have gone out of the possession of the Senate, (or House, as the case may be,) announcing their decision, nor shall any motion for reconsideration be in order, unless made on the same day on which the vote was taken, or within the two next days of actual session of the Senate, thereafter." Under these rules, I unhesitatingly say, that a vote for a reconsideration could, at any time within two days of actual session, be taken, provided the bill was in possession of the House.

Ques. by the same. If a bill has passed the Senate, and afterward passed the House with amendments, to some of which the Senate agree, and to some disagree, and the House insists on its amendments, is there any motion by which the House can abandon its amendments, except by motion to recede?

Ans. If the Senate insists upon its disagreements, it must then return the bill to the House, with a message announcing that fact. The House then has possession of the bill, and has four methods of procedure. 1st. It can insist upon its amendments, and then it returns the bill to the Senate for its action. 2d. It can insist upon its amendments, and ask for a committee of conference, which fact it notifies to the Senate by a message, and if the Senate agrees to the committee of conference, the bill is then placed in the hands of the committee; and their report upon the same becomes matter of action for both houses. 3. The House may recede from its amendments and return the bill to the Senate, with a message. Or, 4th. The House may adhere to its amendments, which cuts off a committee of conference, and the bill is then returned to the Senate, with a message announcing that fact. The Senate must then recede from its disagreement or the bill fails. All of which action is predicated upon the fact of the House having possession of the bill.

Ques. by the same. And in case the House recedes in the case above put, from its amendments, and notifies the Senate thereof, is not the bill passed, without further legislation?

Ans. If the House recedes from its amendments, it must return the bill to the Senate, with the message; the bill must be enrolled, examined by the Enrolling committee, and by that committee be reported as accurately enrolled, then signed, first by the Speaker of the House, and then by the Speaker of the Senate, who fixes the date of its passage. All of which is necessary to complete its passage.

Ques. by the same. When a motion is made and vote taken on a matter, which motion or vote is not in order, is it not the practice to omit such irregular motion or vote from the Journal?

Ans. The constitution of Ohio, in the 9th sect. 1st article, says: "Each house shall keep a Journal of its proceedings, and publish them." My reading, and strict construction of the constitution, teaches me, that the framers of the constitution intended that the people should know as well what the Legislature done that was wrong, as what was right.

Ques. by the same. Is it not proper, when such irregular motions or vote happen in the course of legislation, with the consent of the House, to omit or reject such irregularities from the Journal, when the same is read for correction?

Ans. When the Journals are read, it is in order to correct any error the Clerk may have made, in making up his Journal, but not in order to strike from the Journals any of the House proceedings. Questions of order are as necessary to be Journalized as any other proceedings of the House.

Question by Mr. Dimmock. When a bill which has passed the Senate and been sent to the House, and there amended and returned to the Senate, the Senate agreeing to some amendments and disagreeing to others, returns the bill to the House and that body insisting on a part of its amendments and receding from others, again returns the bill to the Senate, is it in order for the House to recede from the remaining amendments, while the bill is on the table of the Senate?

Ans. Senate bill, No. 70, was laid upon the table of the Senate, on Monday the 14th of Feb., by an adjournment of the Senate, an undecided question was then pending. I do not believe that the history of legislation, either in Ohio or the United States, or the civilized world, can furnish a precedent for such action as was taken by the House. It was contrary to all parliamentary usage or law. The vote of the House could not be called a reconsideration, as more than two days of actual session had elapsed since it had insisted upon its amendments, and as the bill had gone to the Senate, with a message announcing the vote of the House, it could not be called a vote upon the bill, as the bill was not in possession of the House, but belonged exclusively to the Senate until returned to the House by order of the Senate. This, I believe, is the first time that a bill has ever been pretended to be passed by a resolution. The resolution itself referring to a bill to apportion for the *next* General Assembly only, while the bill in the Senate apportioned for four years. A bill upon the table of the

Senate, could only be removed from the table, by a vote of the Senate. No member of the Senate had a right to the bill, without some action to that effect. The Senate Journals now show an undecided pending question upon that very bill.

Question by Mr. Lewis. During the time the receding members had vacated their seats in the Senate, were there any officers of the government present in consultation? If so, please state who they were and what course they advised.

Ans. We kept the "latch string out" in No. 18. All persons, whigs and democrats, were permitted to visit us. I have no recollection of any person advising us what course we should pursue, except the Hon. Benj. Tappan. I believe that Col. Medary was often in our room, as well as other persons. I am quite certain that he had no knowledge beforehand, that we should recede, and to my knowledge he gave no advice as to what course should be pursued.

Ques. by the same. What was your object in vacating your seats in the Senate of Ohio, after having sworn *faithfully* to discharge your duty as Senators?

Ans. We had taken an oath to support the constitution. We believed that the division of Hamilton county was a violation of the constitution. With our presence in the Senate, the whigs could violate the constitution; by our recession, we supposed we could prevent this violation. If then by our presence we permitted this violation, when by our absence we could prevent it, we believed that by remaining we should be *particeps criminis* to its violation.

Question by Mr. Beaver. What course did the Hon. Benj. Tappan advise, and was or was not, his advice adhered to?

Ans. The Hon. Benj. Tappan complained that he had not been consulted before we left the Senate; but as we had taken our position, he recommended that it should be maintained until the division of Hamilton county was restored, and no longer.

Ques. by the same. In case the apportionment bill of last winter passed, was there any opposition agreed upon by and among the receding Senators and other members of the General Assembly, or citizens not members? If such a plan or mode of opposition was agreed upon, state what that was.

Ans. The receding Senators, on Monday, the 14th day of Feb., signed a paper, the same which A. H. Byers sent to the Speaker, and which is entered upon the Senate Journal, agreeing that by their presence they would not permit a violation of the constitution, and that so soon as the apportionment bill was rid of its unconstitutional feature, and made to bear even the semblance of an honest apportionment, they would return to their seats and permit the whigs to pass it; or if the bill should be permitted to lay upon the table, they would return and help do up the balance of the work of the session. I know of no other plan or agreement, either among the members or other democrats.

EDSON B. OLDS.

The committee at 12 o'clock adjourned until 9 o'clock to-morrow morning.

Attest :

JNO. KESSEAW, Clerk.

9 o'clock, WEDNESDAY MORNING, MARCH 22, 1849.

Committee met—present, Senators Dimmock, Beaver and Lewis.

Wm. B. Fairchilds was examined, as follows:

Question by Mr. Dimmock. 1st. Were you Reporter for the Ohio State Journal during the last session of the General Assembly? If so, state whether you reported the proceedings of the House, on the 12th of February, at the morning session. 2d. What action was had on Senate bill No. 70, upon the motion of Gen. Anthony.

Answer. To the 1st and 2d interrogations propounded by the Chairman of the committee, I would answer: That during the last session of the General Assembly, I reported the proceedings of the House, for the Ohio State Journal, and that I was present on the 12th of February, 1848. A reference to the proceedings as reported and published in the columns of the Journal, shows that Gen. Anthony did, on the morning of that day, make a motion to reconsider the vote on the passage of Senate bill No. 70. My impression now is, that that motion was entertained and assented to, by common consent of the House. That in a short time thereafter, the question was raised by a member, as to whether the House *could* reconsider its vote after the Senate had assented to a part of the House amendments and disagreed to others. That it was agreed that the action on the motion to reconsider was not in order, and by common consent that action was treated as a nullity. That the motion to reconsider, was then laid upon the table, and the bill recommitted. I am strengthened in this impression by reference to the proceedings of the House on the 14th of February, as reported by me and published in the Ohio State Journal, where it is stated that the motion to reconsider was taken from the table, and withdrawn by leave of the House. This last report is confirmed by the House Journal of that date, (the 14th,) as I find by a reference to it now; and to show that there was no collusion between the Clerk of the House and myself, I affirm unhesitatingly, that I never read nor had a knowledge of the contents of the House Journal of the 14th of February, 1848, and never knew of the similarity of the two reports, until the evening of the 21st March, 1849. To account in some degree for the discrepancy between my reports of the 12th and the 14th Feb., I would state that I was then, as I am now, in the habit of overlooking and omitting any immaterial corrections of infringements of parliamentary rules which were made during the proceedings of the House. Such corrections are of very frequent occurrence, and I believe it has always been, and is now, the practice of the Clerk to make his Journal conform to what the House finally determines to be correct action, if the correction be made before the close of the day's proceedings. In this instance I undoubtedly thought it was quite sufficient that the fact was stated that the bill had been recommitted, and did not refer to my sheet of notes to correct the report of the doings in relation to the motion to reconsider, not viewing it as a matter of interest to the readers of the State Journal to know that an error in parliamentary law had been committed and afterwards rectified.

WM. B. FAIRCHILD.

EXAMINATION OF ELIAS F. DRAKE, ESQ.

Question by Mr. Beaver. When a bill has passed the Senate, and also passed the House, with amendments, and the bill and amendments are sent back to the Senate, where some of the House amendments are agreed to, and some disagreed to,—1st. Would it be in order to move to reconsider the vote in the House, by which the bill passed, before the bill and papers were returned to the House. 2d. Would it be in order so to move to reconsider, even after the bill and papers were sent to the House?

Ans. In the Ohio Legislature, it has been the practice to entertain a motion to reconsider without possession of the paper, at any time before being advised of final action thereon, by the other branch—that is to say, the motion is moved and seconded, and laid on the table, until the House gets possession of the bill, or resolution, otherwise a motion to reconsider might be cut off, by the limitation of time fixed by the rules of the two houses, but neither house can entertain, as in order, any motion to reconsider, indefinitely postpone, or otherwise dispose of the text, to which both bodies have agreed; and in cases where both houses have agreed in part, to a bill, and amendments remain unsettled, there is no orderly mode, known to me, by which the bill can be disposed of, except by agreement between the houses or disagreement, by which the bill is lost between them.

Ques. by the same. Where a bill has passed both houses, either by receding of the one branch, or agreement of both branches, is there any act further necessary to put the clerk in possession of the bill and amendments, to have them enrolled pursuant to the twelfth Joint Rule?

Ans. I have never known a case where any action of either body has been taken, after the matter of the bill has been agreed to, by the two houses. By immemorial and invariable custom, the clerk of the proper body procures the enrollment of the bill, and hands the same, duly enrolled, to a member of the enrolling committee.

Ques. by the same. When a bill has passed both houses, does not the clerk of the house in which the bill originated, have it enrolled, without further order or motion, whether the bill be in its own house when final action is had or not?

Ans. I believe such has always, for many years at least, been the practice in Ohio.

Ques. by the same. May not a bill properly pass, according to parliamentary usage and law, although at the time of the last act, which ended legislation upon it, the same is not before that branch?

Ans. It may. Cases are frequent where, in disagreement between the houses, a committee of conference is asked by the House; instead of granting the committee, the House recedes from its amendments or disagreements (as the case may be.) There are other cases where, committees of conference agree upon terms of accommodation between the houses, they report their agreement to their respective houses, for action simultaneously, one of which, of course can only

have possession of the bill. In both cases above cited, the bill becomes a law, and is enrolled without farther legislation.

Ques. by the same. When you were Speaker of the House of Representatives, and a motion was made or vote taken on a matter, which motion or vote, so made and taken, were consequent upon a breach of the rules of order, did it occur within your knowledge, that such motion or vote, so out of order, were omitted or rejected from the Journal of the proceedings. Was or was it not the practice of the legislative branch over which you presided, to omit and reject from the Journal, proceedings which were out of order, and was it not the duty of the Speaker to order such omission and correction when agreed to by common consent.

Ans. While I was Speaker of the House, the clerk kept his Journals during the business part of the day, on loose sheets of paper, in the form of memoranda, from which the Journal was finally made up. During the business of the House, motions, not in order, were often inadvertently made and entertained, and when discovered, were, by common consent, corrected, erased from the memorandum of the clerk, and no further notice was taken of it. Such cases often occurred while I was Speaker. I know of no case when such proceedings were entered on the Journal. It being my duty to examine and correct the Journal, I always, when such a case came under my notice, directed such disorderly proceedings to be omitted. I never knew any objection made, by any member, to omitting such void action.

Question by Mr. Dimmock. Is there any manner in which a bill or resolution, which has been laid on the table of either house by a direct vote or by adjournment, can be taken up, except by a vote of the House?

Ans. I know of none.

Ques. by the same. Where a bill has passed the House and been sent to the Senate, and there amended and returned to the House, that body disagreeing to Senate amendments, again returns the bill to the Senate, where some of its amendments are insisted upon, and others receded from, the bill again returning to the House, and on a motion that the House recede from its disagreement, pending which the House adjourns, thereby leaving the bill and pending question upon the table, will a subsequent receding on the part of the House from its disagreement to Senate amendments, take the bill from the table of the House?

Ans. In the case put, the orderly proceeding would be to take from the table of the House by motion, and then recede. If however the motion to recede should be entertained as correct, without the motion to take from the table, and the House should so recede, the bill would be a law, and would be instantly, by the rules of the two houses, in the custody of the clerk for enrollment. In the case put, had the Senate receded from its amendments, while the bill was on the table of the House, it would by general rules, and without motion, pass from the table to the custody of the clerk, as before stated.

Ques. by Mr. Beaver. If the amendment to a Senate bill, amended in the House, be under consideration, and laid on the table by adjournment, and afterwards, and before the bill is taken up again, the

House recedes from its amendments, is it necessary to make any motion to take up the bill, in order to place it in a position to be enrolled, or give the proper clerk control over it?

Ans. In such a case, the body of the bill having been agreed to by both houses, it passes to the custody of the clerk, and without an amendment or change of the rules, neither house, nor both together, have power to take it from the clerk, until his duties are performed.

Ques. by Mr. Dimmock. In the case last put by me, suppose the motion to recede from its disagreement was still pending before the House, would the receding of the Senate from its amendments, be in order? If so, what would be the effect of the adoption of the motion in the House to recede from its disagreement?

Ans. The Senate would have no means of knowing that such a question was before the House, and therefore its proceedings could not be affected thereby. There being a disagreement between the houses neither could complain that the other yielded to its wishes by receding from its disagreement. Whenever such disagreement is removed by the action of either or both parties, the effect would be to make the bill a law.

Ques. by Mr. Beaver. When the General Assembly is organized by electing Speakers and Clerks, and messages are exchanged by both branches, informing each other that they are organized, and ready to proceed to business, is that body not in session until the sine die adjournment?

Ans. The bodies are certainly in session as a General Assembly, and the members entitled to all their privileges as members until a sine die adjournment.

Ques. by the same. Is there any difference between laying a bill on the table, by adjournment, for want of a quorum, and when there is a quorum doing business lays such bill on the table? If so, state wherein that difference consists.

Ans. It is usual when either house adjourns, with or without a quorum, to consider matters pending as laid on the table. I think, however, a distinction can justly be taken between the effect of an adjournment with, and without a quorum, in this—that laying on the table may be regarded as business of the body, which it could not constitutionally do by direct motion, and consequently cannot be done indirectly. The effect of laying on the table is to postpone action on the bill to an uncertain day, or time, and supposing the rules should directly provide that an adjournment should in all cases postpone the matter under consideration for one week, would it not be business which is forbidden to be done by less than a quorum?

Ques. by the same. Is it competent for one branch of the legislature to address the other branch by message, or address communications when the branch addressed was in session, but without a quorum to do business?

Ans. I consider it the right of either body to send a message to the other, as provided by the joint rules. The branch sending the message cannot legally know that the other is without a quorum. The Sergeant-at-arms, carrying the message, is bound to know the

hours of adjournment of the other body, and if during those hours he finds the Speaker and Clerk in discharge of their duties, it is no part of his business to count the members present. He must deliver the message.

Ques. by Mr. Dimmock. In the case last put to you by Mr. Beaver, would it be in order for the clerk to read the message thus delivered by the Sergeant-at-arms? And would not the reading thereof be considered doing business?

Ans. I know of no rule that would prohibit the clerk from reading such message. Its reading would determine nothing and do nothing, and could hardly be considered business of the Senate. I suppose should one or all of the absent members send by any one a paper to the clerk's desk, explaining their absence, he might read it. It would simply give information, and leave all business in *statu quo*.

Ques. by the same. Did you ever know of a case, in your legislative experience, where the Sergeant-at-arms read a message at the clerk's desk, and would it be in order for the clerk to enter upon his Journal a message from the other branch which had not been read by himself or his assistant?

Ans. I never knew a case, except the one which occurred last winter, but if I am not mistaken, George H. Flood, Esq., some years since clerk of the House of Representatives, by order of the Speaker of the House, did read or announce in open Senate, that the House was ready to go into certain elections. Many years since, as I think, it appears by the Journals of the two Houses, messages were invariably announced *via voce*, by a member carrying it. I know of no rule that would prevent such announcement or reading by the Sergeant-at-arms, though by the joint rules it is the duty of the clerk to read the same, and if announced to the Senate, the clerk should truly record the fact.

Ques. by the same. Where the Senate amends a bill passed by the House, and the House disagrees to the amendment, returns the bill to the Senate, and that body recedes from its amendment, and at the same time, the House recedes from its disagreement, does the bill pass as amended by the Senate, or as originally passed by the House?

Ans. I never knew a case of the kind, nor do I suppose that any precedent exists. Were I called upon to decide a case, as at present advised, I would say, whenever either body had receded and thereby agreed to the form required by the other house, legislation would be ended on that bill. If the houses were to recede respectively at the same instant, I suppose nothing would be determined by the action.

Here the committee, it being one o'clock, took a recess until $\frac{1}{2}$ past two this afternoon.

HALF PAST TWO O'CLOCK.

Committee again met—all present—and resumed the examination of Elias F. Drake, Esq.

Questions by Mr. Dimmock, one and two. Were you a member of

the House of Representatives of the last General Assembly of the State of Ohio? *And*, Were you present on Saturday, February 12, at the time Mr. Anthony moved that the House reconsider its vote by which it passed Senate bill No. 70?

Answers, *one and two*. I was.

Ques. by the same. Was that motion put and carried: and afterwards decided out of order?

Ans. The motion was made, put and carried, and afterwards unanimously agreed by the House to be out of order.

Ques. by the same. What was the question of order upon which the decision was made, that it was not in order?

Ans. The motion was made, if my recollection is right, before the noon recess, and the bill committed to Messrs. Anthony, Warren and Breck. In the afternoon it was reported back, at which time I raised the question of order, "that the House could not reconsider the vote on the passage of the bill, after the Senate had agreed to a part of the House amendments, and the substance of the bill had become the act of both,—neither house can in such case reconsider without the action of the other." The Speaker of the House sustained the point, and, as I recollect, was sustained by Mr. Warren, of Hamilton, and Mr. Noble, of Seneca. Such a general concurrence in favor of the point of order, was shown in the House that the Speaker suggested that the House should treat the reconsideration as totally void, and that the clerk should take no notice of it. The suggestion was agreed to without opposition, with the understanding that if the Senate should reconsider its vote, agreeing to part of the House amendments, the motion to reconsider by the House might be entertained. With this view Mr. Anthony's motion to reconsider was laid on the table. The Senate sent for the bill, and a motion was made to reconsider in the Senate, with the announcement that the object was to enable the House to reconsider. The House afterwards disposed of the motion to reconsider, and no reconsideration was had upon the bill. The clerk of the House made up the Journal without noticing the informal action of the House, and it was agreed to next day, when read, without objection.

Ques. by the same. Were you and other whig members in caucus or consultation on Father Park's resolution, as "touching House amendments to Senate bill No. 70"? If so, state what was agreed upon in that meeting, and who was present beside members of the House.

Ans. I have no recollection that father Park's resolution, so called, was ever considered by the members of the House in caucus. On the contrary, I do not know or believe that more than five or six whig members of the House ever saw it or heard it read before it was read from the Speaker's chair. It was generally understood by the whig members of the House that the House would recede from their amendments.

Ques. by the same. Have you any knowledge or recollection as to

who drafted the resolution introduced by father Park? If so, state by whom it was drafted.

Ans. I drafted it.

Ques. by the same. Was he selected for that purpose because he would be less likely than any other man to excite the suspicion of the democrats?

Ans. After the resolution was drafted, the Speaker of the House asked me to take the Chair, as he wished to be absent during the morning business, and I then handed the resolution to Mr. Matthews, who sat not far from me, and he agreed to offer it; but a short time before it was offered it was handed to Mr. Park, who sat near the Speaker's chair. I was engaged when Speaker Hawkins wished to leave, and he called Mr. Truesdale to the chair. No arrangement was made or understood as to the precise time the resolution should be offered. The resolution was handed to Mr. Matthews, and subsequently to Mr. Park, because I believed it would be less likely to excite the democratic side of the House if offered by either of them than by myself. I, in common with other members, had reason to believe the democratic members of the House would "absquatulate" if in their power, particularly if politically excited. They had published a card, a day or two previous, sustaining the Senators of their party, and declaring that they, in like circumstances, would leave their seats. I desired that as little feeling should be excited as possible, and the threatened consequences avoided.

Ques. by the same. What reason did the Speaker assign for desiring you to take the chair?

Ans. He assigned, as general reason, his wish to be absent. I am not positive that he offered as a reason for leaving the chair any thing connected with the receding resolution, but in conversation with him, at the time, he stated in substance that he expected the resolution would be warmly opposed by the democrats, and possibly violently resisted. He wished to avoid any collision that would render his place as presiding officer disagreeable, as he would if in Chair preserve order at all hazards.

Ques. by the same. Do you not recollect that he urged as one reason why he desired to be absent, that if occupying the chair when the resolution was offered he should read in a loud voice, so that all the members could hear him, as he would not be the instrument of deceiving the democrats?

Ans. No; and if he had, and had applied to me to take his place and read it so that it could not be heard, I would have received it with scorn, as a dishonorable proposal.

Ques. by the same. Do you know whether Mr. Hawkins, the Speaker, has since boasted that the democrats were tricked in the passage of that resolution?

Ans. I know nothing except by common rumor on democratic authority.

E. F. DRAKE.

The committee at 5 o'clock adjourned to 9 o'clock to-morrow morning.

Attest :

JNO. KERSHAW, *Clerk.*

FRIDAY, 9 o'clock, *March 29, 1849.*

Committee all present.

Mr. Samuel Galloway, Secretary of State, appeared and was qualified to testify before the committee by Alexander Patton, Esq., justice of the peace as aforesaid, and was examined as follows :

Question by Mr. Dimmock. Was Senate bill No. 70, of the last General Assembly deposited with you, as Secretary of State ? If so, please state on what day it was so deposited, and the hour of the day, as near as possible.

Ans. I cannot precisely recollect the day, but my receipt for the bill will show. The bill referred to was received at the same time the receipt was given. Bill No. 70 was handed to me in the evening, and to the best of my recollection, between 6 and 7 o'clock.

Ques. by the same. Who deposited the bill with you ?

Ans. Mr. Hastings, of Harrison.

Ques. by Mr. Lewis. Since you have been Secretary of State, do you know of bills being deposited on the day of their passage ? If so, please state the practice in such cases.

Ans. My impression and recollection are that bills have been presented frequently on the day of their passage ; generally, however, bills do not reach my office until two, three and four days after their passage. In cases where bills are immediately presented, they have been usually brought at the special request of individuals specially interested in their passage.

On motion of Mr. Dimmock,

A subpoena was issued for James H. Smith, Esq.

James H Smith, Esq., appeared before the committee and was qualified to testify by Alexander Patton, Esq., justice of the peace as aforesaid, and examined as follows :

Question by Mr. Dimmock. Were you a member of the last House of Representatives of the General Assembly ? If so, were you present on the 18th day of February, when father Park offered his resolution as touching the amendments of the House of Representatives to Senate bill No. 70 ?

Ans. I was a member of the House of Representatives at the last session of the General Assembly, and I was present when Mr. Park, of Lorain, introduced the resolution named above.

Ques. by the same. Was Mr. Park in the habit of offering resolutions on political subjects ?

Ans. He was not. I have no recollection of his ever having offered a resolution or made an important motion when questions of a

partizan or political character were under consideration in the House, before the resolution named.

Ques. by the same. Who occupied the chair, as Speaker, at that time? And was it usual for the person who occupied the chair to be called on to preside?

Ans. Mr. Truesdale, of Mahoning, was called to the Speaker's chair shortly before the introduction of father Park's resolution. It was not usual for Mr. Truesdale to be called on to preside in the House.

Ques. by the same. Did he read the resolution in the usual, plain, audible voice? And could all the members have heard him, if listening?

Ans. I did not think the resolution was read in a distinct and fully audible manner. Nor do I think that nearly all the democratic members knew, until some considerable time after it was declared "passed" by the temporary Speaker, in any wise accurately, the intention or contents of the resolution. I could not have told at all perfectly what it proposed at the time of its passage, and only was enabled to guess as to what it referred, by noticing the occurrence of the phrase, "Senate bill No. 70," and perhaps two or three other words, as Mr. Truesdale read it. That was all I could hear and distinctly understand as it was read.

Ques. by the same. After the question was put, was the usual time allowed before declaring the decision? And was there a full vote?

Ans. The usual time was not allowed. It was read, the question put, and declared carried, in an unusually rapid manner. There were not on the democratic side, I think, ten voices against the passage of the resolution, perhaps not half so many.

Ques. by Mr. Lewis. During your experience in the Legislature, was it not usual for the Speaker to call different persons to the chair? Or is it common to select a few particular members to fill that place?

Ans. It is not usual for the Speaker to designate different members to take the chair temporarily.

Ques. by Mr. Dimmeck. Is it usual when questions of exciting importance are about to be acted upon, for an experienced Speaker to leave the chair, and call a new and inexperienced member to preside?

Ans. I think it is not a common practice. I had never before seen it done, as far as my present recollection goes.

Ques. by Mr. Beaver. Did you concur in and sign a card published in the Ohio Statesman, of date about the 17th Feb., 1848, as to the determination of the democrats in relation to the difficulties arising out of the passage of the apportionment law? If you read the same, is the extract from the Statesman, now shown you, a true copy?

Ans. I did concur in, sign, and fully endorse the card designated. The following is a correct copy:

"The undersigned members of the House of Representatives heartily approve of the course pursued by the democratic Senators in leaving their seats on the passage of the apportionment bill, and had

the question been put in the same manner in the House of Representatives, we would have pursued the same course.

E. L. ARMSTRONG,
CYRENUS ELLIOTT,
J. MUSGRAVE,
JOHN S. COCK,
WM. JOHNSTON,
M. TALTON,
DAVID LYLE,
E. D. POTTER,
M. M. COE,
WILLIAM COOLMAN,
MICHAEL BRACKLEY,
WILLIAM MORROW,
N. M. LANDIS,

W. S. SMITH,
AMOS CORWINE,
WM. F. CONVERSE,
JAMES MCKINNEY,
J. W. WARREN,
W. P. NOBLE,
DAVID BREWER,
JAMES H. SMITH,
J. F. WILLIAMS,
JOHN CLARK,
JOSEPH WILLIAMS,
SALMON SHAW,
JAMES PATTON."

Ques. by Mr. Dimmock. Please state, as briefly as possible, why you concurred with the fifteen Senators in that course.

Ans. I deemed the apportionment bill unconstitutional, and thought its effects would be to disfranchise a considerable portion of the people of Ohio, in relation to their rights of representation in the General Assembly. I thought the secession of the fifteen Senators the only practicable mode left them to defeat the bill, and I believed then, and do yet, that their action was both defensible and right.

Ques. by Mr. Lewis. Were you at any time in caucus with the seceding Senators of the last session of the General Assembly? And if so, what course was determined upon? You will please state if any officers of the government, or other citizens, not members, were present at any of those meetings, and what course they advised.

Ans. I was several times in caucus with the Senators of the last session. I do not remember whether I was present when they agreed to secede, in any event, if their secession was previously concerted. I think not, however, having most probably been kept away by illness. There were present, sometimes, but quite seldom, those who were not members of the Legislature. I think that no such person, in my hearing, ever so far as at all to influence the action of members, advised any course; though, after the secession, several persons, not members, both in caucus and without doors, did in my hearing approve fully the secession. Some of those persons were, I think, officers of the government. I was quite ill during the occurrences to which the interrogatories have allusion, and somewhat irregular in my attendance at the meetings of members. My recollection is, therefore, somewhat imperfect. It was a matter of general conversation, and, I know, not at all confined to members exclusively. But they were scrupulous, invariably so, to do nothing but wholly on their own official responsibility. Such, at least, was my own course, and I believe it was universal.

JAMES H. SMITH.

On motion of Mr. Beaver,

Subpoenas were issued to Seabert Scott and Geo. D. Hendricks, who appeared to testify before the committee, and were qualified by Alexander Patton, Esq., Justice of the Peace, as aforesaid.

At 1 o'clock the committee adjourned to $\frac{1}{2}$ past 2.

HALF PAST TWO O'CLOCK.

Committee convened—all present.

EXAMINATION OF C. B. GODDARD.

Question by Mr. Beaver. When a bill has passed the Senate, and also passed the House with amendments, and the bill and amendments are sent back to the Senate, where some of the House amendments are agreed to and some disagreed to; first, would it be in order to move to reconsider the vote in the House, by which the bill passed, before the bill and papers were returned to the House? and, second, would it be in order so to move to consider, even after the the bill and papers were sent to the House?

Answer. I think the decisions have been against considering such motions, under such circumstances, as in order. I remember maintaining the proposition upon the floor of the Senate, that our rules permitted a motion to reconsider within two days, and that such motion might be made without regard to the position of the bill, even if enrolled, signed, and deposited with the Secretary of State. I am under the impression that the question was made in the Senate last session, and that I decided it in accordance with precedent, and against my own opinion.

Ques. by the same. Where a bill has passed both Houses, either by the receding of one branch, or agreement of both branches, is there any further act necessary to put the Clerk of the House in which it originated, in possession of the bill, for the purpose of enrollment, according to the 12th joint rule?

Ans. I know of none. Possibly if some more minute inquiries were put to me, I might give a more satisfactory reply.

Ques. by the same. Was it, or was it not, the practice of the legislative branch over which you presided, to omit or reject from the Journal, proceedings which occurred or took place, inadvertently, or out of order? And if so, was it not the duty of the Speaker to order such omission, or correction, when the Journal was next read for correction, or when assented to by the House?

Ans. I am unable now to recollect any particular instance in which the Senate, at the last session, omitted from the Journal inadvertent proceedings, or such as were not in order. It is certainly my impression that such things occurred frequently, but were always the result of common consent. Had such a thing occurred, and nevertheless been journalized by the Clerk contrary to the apparent unanimous wish of the Senate, I should either have directed the Clerk to correct

it, so as to make it correspond with such unanimous wish, or have called the attention of the Senate to it for the same purpose, while the Journal was being read.

Ques. by the same. May not a bill pass into a law, when the text has been assented to by both houses, by the receding of either branch having made amendments and insisting thereon, and if the subject of disagreement be removed by such recession, is any act, of either branch, necessary to put the proper Clerk in possession of the bill, to enroll the same.

Ans. The first branch of this question I answer in the affirmative. The second I think I answer in answering question No. 2. I do not now perceive the necessity of any act of either branch for the purpose indicated.

Ques. by the same. If the amendments to a Senate bill, amended in the House, be under consideration, and laid on the table by adjournment, and afterwards, and before the bill is taken up again, the House recedes from its amendments, is it necessary to make any motion to take up the bill, in order to place it in a position to be enrolled, or give the proper Clerk control of it?

Ans. I think not.

Ques. by the same. When the respective branches of the General Assembly have organized by the election of Speaker, and other officers, and mutually notified each other that they were ready respectively, to proceed to business, are, or are not both branches in session and continue so, until the sine die adjournment?

Ans. I think not. Each house sits upon its own adjournment, and when adjourned it is not considered in session. In one sense it is true that the session continues until a sine die adjournment, and the laws passed between the first Monday of December and the final adjournment, are said to be passed at one session. So of the Journals.

Ques. by the same. Is it then consistent with parliamentary law and custom, to transmit messages and communications from one branch to the other, whether there be or be not a quorum in the branch addressed?

Ans. In my opinion a branch sitting without a quorum, may not only receive but transmit messages.

Question by Mr. Dimmock. On the Senate Journal of the last session, page 560, appears the following entry: (Senate bill No. 70 being under consideration,) "Mr. Lewis moved that the Senate recede from its disagreement to the third House amendment to said bill." Is that a correct entry?

Ans. According to the best of my recollection it is. I do not remember the *number* of the amendment.

Ques. by the same. The next entry upon the Journal, and without a decision upon a pending question, shows a call of the Senate, and fifteen Senators absent, then, on motion of Mr. Corwin, the Senate adjourned. Did that adjournment lay the bill and the pending question of Mr. Lewis upon the table?

Ans. Had there been a quorum present, such I understand is the effect of an adjournment. I am unable to say, with certainty, that the

effect follows if the adjournment is for want of a quorum. Some take a distinction between the adjournment of the Senate, and of *the Senators present*. I think, however, that the bill should be considered as laid upon the table.

Ques. by the same. Had any person a right to take it from the table, without order of the Senate?

Ans. I think the Clerk might do so, without any order of the Senate. If such action had been taken, in the other house, as to make the bill a law, it would be his duty to take the bill from the table, to have it enrolled. He might do this for that purpose, even before the final passage. This, however, would be irregular, and would be censurable or commendable according to the motive which prompted it. I have heard that long bills towards the close of a session, have been on several occasions enrolled before the final action, it being well known what the final action would be. When this is done, it is done to save the time of the General Assembly.

Ques. by the same. Is it in accordance with parliamentary law, or the requirements of the rules of either branch of the Ohio Legislature, for one house to act on a bill when the same is in possession of the other branch, and laid on the table; or when a motion is pending relative to action thereon?

Ans. In my opinion, the most regular and orderly mode of proceeding in such case would be, for the branch which is acting on the bill, to have the bill before it. I think any member might reasonably require its production, before action. In practice, however, the contrary frequently happens. When a committee of conference makes simultaneous reports to each branch, it is common for one to act without the bill. If the report of the committee is difficult to understand without the bill, the house not having possession of the bill, would probably delay acting on the report until the other house had acted, and then send for the bill. If the report of the committee was intelligible without the bill, it would probably act at once. An example of the House receding from its disagreement with the Senate while the bill was in the Senate, may be found in the case of House bill 267, at the last session. See House Journal, page 660, and Senate Journal page 647 to 651.

Ques. by the same. When a bill which has passed the Senate, been amended in the House, and returned to the Senate, that body disagreeing to the amendments and returning the bill to the House, which, receding from some of its amendments and insisting on others, sends the bill back to the Senate, and then, while the bill remains under consideration in the Senate, the House recedes from its remaining amendments, *at the same moment* that the Senate recedes from its disagreement, in what shape does the bill become a law—as amended by the House, or as originally passed by the Senate?

Ans. In such a case the bill would not become a law, because of the contradictory action of the two houses.

Ques. by the same. Was there afterwards any vote of the Senate taken upon the pending motion of Mr. Lewis, "that the Senate recede

from its disagreement to House amendments?" (referred to in my first question.)

Ans. None that I know of.

Ques. by the same. Did you, in your place, as Speaker, on Saturday morning Feb. 19, 1848, inform Messrs. King and Olds, of the Senate, that you had signed Senate bill No. 70, to fix and apportion the representation of the General Assembly, and that it was then in the hands of the Secretary of State?

Ans. I did.

Ques. by the same. The Senate Journal of Saturday afternoon, page 575, shows a message from the House, received that afternoon, informing the Senate that the Speaker of the House had signed Senate bill No. 70. Then appears the following entry, "Said bills were severally signed by the Speaker of the Senate on yesterday"—and, still later, on the Journal of that day, page 582, appears an entry of the report of the Enrolling committee, at that time reporting back Senate bill No. 70, correctly enrolled. Did you actually sign the bill, and was it deposited with the Secretary of State, one day before you were notified that it had been signed by the Speaker of the House, and before it had been examined by the Enrolling committee?

Ans. I signed the bill and knew of its deposit in the Secretary's office, on Friday evening, the 18th. I did sign the bill one day before there appears to be any entry on the Journal that it had been signed by the Speaker of the House, or that it had been examined by the enrolling committee. It is proper to state, that with respect to that and all other bills, I looked for no other evidence of the correct enrollment than the signature of the Speaker of the House. The bill was signed by the Speaker of the House before it was presented to me for my signature.

Ques. by the same. Did you sign the bill in the presence of the Senate?

Ans. No.

Ques. by the same. Had there actually been a constitutional quorum in the Senate for four days previous to the time you signed the bill?

Ans. No.

Ques. by the same. Was there actually a quorum of the Senate on the day you signed the bill?

Ans. No. I did not sign it in the Senate Chamber. I signed that bill and more than sixty others, bearing the same date, at my lodgings.

Ques. by the same. Was there any agreement between you and other whig Senators, that your decision and acts as Speaker, on that bill, should be sanctioned and sustained? And did you counsel with any individual or individuals, not members of the General Assembly, in relation thereto? If so, state who they were, and what was the nature of their advice.

Ans. In answer to the first branch of this question, I say No. In answer to the second branch, I say, that I wrote, by mail, to John C. Wright, of Cincinnati, requesting an answer by telegraph. I asked

his opinion on several questions respecting the power of the Senate to bring in the absent members, and the power of the Speaker to sign bills, when no quorum present. I think this had no reference to the apportionment bill. I understood his answer to imply that a Speaker might sign bills up to the end of the session, but it was brief and obscure, and I may have misunderstood it. I do not remember that I counselled with any other person.

Ques. by the same. When a motion to reconsider the vote on the passage of a bill is made, and that motion is laid on the table, what becomes of the bill?

Ans. I suppose the bill goes on the table. Upon reflection, I think this answer is wrong. According to the practice in the House of Representatives in Congress, laying a motion to reconsider on the table is deemed fatal to the motion. I have not examined to ascertain if this is the result of a rule, or of the acknowledged principles of parliamentary law. According to our practice, I think, the effect of laying a motion to reconsider on the table is to save the two days, and preserve the abstract right to take it up, but that further action on the bill is not delayed because of this motion thus laid on the table. However, the clerk of either house could answer this question much more satisfactorily than I can.

CHAS. B. GODDARD.

EXAMINATION OF JOHN G. BRESLIN, Esq.

Question by Mr. Dimmock. Are you the Speaker of the House of Representatives?

Ans. I am.

Ques. by the same. How many sessions have you acted as clerk and assistant clerk of the Senate?

Ans. I was elected clerk of the Senate of Ohio in December, 1846, and served in that capacity during the session of 1846-7. I never acted in the capacity of assistant clerk of either branch of the Legislature.

Ques. by the same. In your experience as clerk and speaker, did you ever permit or know of a bill being enrolled before it had been acquiesced in, in every particular, in due form, and by both branches of the Legislature?

Ans. No bill has ever, with my knowledge or consent, been enrolled previous to its passage by both Houses.

Ques. by the same. During your experience as clerk and speaker, have you ever known an instance where a Sergeant-at-Arms read a message from one branch to the other at the clerk's desk? Would such a proceeding, according to your understanding of the requirements of the joint rules, be in order?

Ans. I have never known in my experience a message transmitted by either house to the other, to have been read by a Sergeant-at-Arms.

I would consider the reading of messages by a Sergeant-at-Arms a violation of the joint rules of the General Assembly, and therefore

no notice could be taken of it, except to punish the officer for a usurpation and violation of his duty.

Question by Mr. Beaver. Did it ever happen, when you were clerk, that motions made, when out of order, were omitted from the journals?

Ans. When a member makes a motion, and the Speaker states or suggests that it is not in order at that moment, and the House acquiesces, it has been regarded as an informality, and therefore not placed on the journal.

Ques. by the same. Is it not a circumstance of frequent occurrence, that when business is done at an improper time in the order of business, to take no notice of such irregularity on the journal?

Ans. No notice is taken of any irregularity, unless the action of the body is had upon the subject at the time.

Ques. by the same. After a bill has passed one branch, and afterwards passed the other branch with amendments, to some of which the branch first passing the bill has agreed and to some disagreed, the branch making the amendments then insists on its amendments, is there any proper motion by which the amending branch can abandon its amendments except the motion to recede?

Ans. The action in this case being upon its disagreement, the amending branch can send, by message, for the bill, and then, when before it for action, it can recede.

Ques. by the same. If the House of Representatives recedes from its amendments after the Senate has disagreed to the House amendments, and notifies the Senate thereof, is not the bill passed without further legislation?

Ans. It is, if such receding has been in conformity with the rules, by the observance of which all bills are legally and constitutionally passed.

Ques. by the same. When a bill has passed one branch, and is sent to the other branch, where it is passed with amendments and sent back, by message, to the branch in which it originated, is it competent for the branch making those amendments to recede while the papers are in the possession of the other branch?

Ans. It is not proper for one branch to take action "on a paper after it has been parted with."

Ques. by the same. When the amended bill is sent to the branch in which it passed, do not the amendments remain, in the amending branch, correctly entered on the journal?

Ans. When an amendment in either branch is offered and agreed to, it is entered, of course, upon the journal. The amendment is engrossed by the clerk, and its passage by him authenticated. It therefore accompanies the bill, as a vital part, in every stage, until its final passage, unless, subsequently, the house making it recedes, in the usual and parliamentary mode.

Ques. by the same. Is it not competent, in parliamentary bodies, to act informally on questions occurring in legislation for the purpose of producing agreement, harmony, and concord between the two branches of the Legislature and its members?

Ans. The practice of the last Legislature has shown those bodies to be "competent" to do almost any thing; but I do not know of any practice or parliamentary law which justifies a resort to "informalities" to procure "agreements," or pass laws, in defiance of recognized and established parliamentary rules.

Ques. by the same. Do you mean to say that one branch of the Legislature cannot properly recede from its own amendments, without first having the bill and amendments before it?

Ans. I do. In cases of conference there may be exceptions to this rule.

Ques. by the same. On a motion to recede from amendments introduced by the branch in which such motion is made, are these amendments not always before the body by having them on the Journal, so as to render the bill itself unnecessary?

Ans. They are not before the body by being on the journal of any previous day. On a motion to take up the bill, for the purpose of receding, the amendments must accompany the bill, properly attested by the clerk, that they have been agreed to. The body then, by a motion, recedes.

Ques. by Mr. Dimmock. When a bill, which has passed the Senate, been amended in the House, and returned to the Senate, that body disagreeing to the amendments, and returning the bill to the House, which, receding from some amendments and insisting on others, sends the bill back to the Senate, and then, while the bill remains under consideration in the Senate, the House recedes from its remaining amendments *at the same moment* that the Senate recedes from its disagreements, in what shape does the bill become a law—as amended by the House, or as originally passed by the Senate?

Ans. The action of the House in receding would be improper and unparliamentary. The Senate receding from its disagreement would place the bill in its original position before the Senate, after its return from the House. I do not see by what authority the House would recede, when the bill was waiting the action of the Senate. The Senate, then, receding from its disagreement, brings that body to an agreement to the House amendments, and the bill would thus be passed,—there being no further disagreement between the branches.

Ques. by the same. Do you know of any instance where a motion was made and entertained, a vote taken thereon and decided, and the other branch notified thereof, by message, that such proceedings were properly omitted from the journal?

Ans. I know of no practice, or parliamentary law, that would justify such omission from the journal.

Ques. by the same. Is it a safe, or parliamentary practice for enrolled bills to be examined by less than a majority of the enrolling committee?

Ans. The duties of the enrolling committee are very important; indeed, of much more importance than they are generally regarded. I consider it irregular, improper and unsafe for bills to be examined by any other persons than the committee on enrollment.

Ques. by Mr. Lewis. While you were clerk of the Senate, did you *at any time* permit bills to be taken from your desk for the purpose of enrollment previous to the message being read containing the same?

Ans. I am not aware that I permitted such a practice during my service as clerk.

J. G. BRESLIN.

EXAMINATION OF SABIET SCOTT.

Question by Mr. Beaver. Are you a member of the enrolling committee of the Senate?

Ans. I am.

Ques. by the same. What is your practice in comparing enrolled bills? Do you call together the whole of the joint committee of both houses, or do you examine bills by a member of each?

Ans. The practice of the committee has not conformed to either of the modes mentioned in your question, as far as my knowledge extends. All the bills that I have assisted to enroll have been done by the Senate portion of the committee. I have several times protested with the chairman of the Senate committee against such a mode of proceeding, as I thought it in violation of the joint rules of the two houses, but my protestations have been unheeded.

Ques. by Mr. Dimmock. What has been the practice, so far as you know, when bills of general importance and exciting interest are to be examined?

Ans. As far as my knowledge extends, there has not been any difference in the practice of the committee, in the enrollment of bills, whether they are important or unimportant, the same scrutiny has been observed.

SABIET SCOTT.

EXAMINATION OF G. D. HENDRICKS.

Question by Mr. Beaver. Are you a member of the committee on enrollment in the Senate?

Ans. I am.

Ques. by the same. What is your practice in comparing enrolled bills? Do you call together the whole joint committee of both houses, or do you examine bills by a member of each?

Ans. So far as I, as chairman of said committee, am concerned, my practice varies to suit circumstances. Have almost invariably been pressed with business, and generally called on a Senate member of the committee, or some other Senator, except once, when I asked the chairman of the enrolling committee of the House to aid me, he refused, and since then I have only had Senators to assist me. I pursued the same course some years ago, when a member of the committee on enrollment. As chairman, I took the responsibility!

Ques. by Mr. Dimmock. What has been the practice, so far as you know, when bills of general importance and exciting interest are to be examined?

Ans. My practice is to make no difference.

GEO. D. HENDRICKS.

EXAMINATION OF H. G. BLAKE.

Question by Mr. Beaver. Were you present on the 12th of February, 1848, when Mr. Anthony made a motion to reconsider the vote had in the House on the passage of Senate bill No. 70, the apportionment law? State all you recollect in relation to the proceedings in the House, on said motion.

Ans. I was present at the time said motion was made. It was subsequently claimed that said motion was not in order, and by common consent, was regarded as informal.

Ques. by the same. Were you present on the 18th of February, when Mr. Park offered his receding resolution? If so, state as fully as you recollect what took place.

Ans. I was present at the time referred to in the above question. The resolution was presented by Mr. Park, to the effect that the House recede from its amendments to Senate bill No. 70, to fix and apportion the representation of the General Assembly of the State of Ohio. The resolution was read by the Speaker, and the question taken on its adoption, and passed. Mr. E. D. Potter moved to reconsider the vote by which said resolution was passed, which motion was voted down. Mr. Potter then gave notice that he would enter a protest on the journal, in behalf of himself and others, against the passage of said resolution, which protest was entered on the journal.

Ques. by Mr. Dimmock. Do you think the democratic members, or any considerable number of them, understood the question, before the resolution was declared to have been passed?

Ans. I cannot tell, but presume there were but few of the democratic party in the House who understood the question, as the resolution was read in a hurried manner by the Speaker, in consequence of the declarations which had been made by members of that party, that they would leave the House without a quorum, if any attempt was made to touch Senate bill No. 70.

H. G. BLAKE.

Five o'clock, committee adjourned to nine o'clock to-morrow morning.

Attest :

JNO. KERSHAW, Clerk.

9 O'CLOCK, SATURDAY MORNING, }
March 24, 1849. }

Committee met—all present,—and after an examination of the foregoing evidence, and auditing the accounts of witnesses, clerk, sergeant-at-arms, &c., hereunto attached, adjourned sine die.

ASA G. DIMMOCK, Chairman.
JOHN F. BEAVER,
PINKNEY LEWIS.

THE Chairman issued Certificates to the following named persons for the amounts set opposite their names.:

To E. F. DRAKE,	
For 4 days attendance, as witness.....	\$12 00
For 126 miles traveling fees.....	15 12
	<hr/> \$27 12
To E. B. OLDS,	
For 4 days attendance, as witness.....	12 00
For 25 miles traveling fees.....	6 00
	<hr/> 18 00
To SAMUEL MEDARY,	
For 4 days attendance, as witness.....	12 00
To E. BURKE FISHER,	
For 4 days attendance, as witness.....	12 00
To C. B. FLOOD,	
For 4 days attendance, as witness.....	12 00
To C. D. TAGGART,	
For 4 days attendance, as witness.....	12 00
To WM. B. FAIRCHILD,	
For 4 days attendance, as witness.....	12 00
To CHARLES SCOTT,	
For 4 days attendance, as witness.....	12 00
To JAMES F. NOBLE,	
For 4 days attendance, as witness.....	12 00
To SAMUEL GALLOWAY,	
For 4 days attendance, as witness.....	12 00
To WILLIAM KELSEY,	
For use of Committee Room and fire, 7 days	14 00
To A. J. WEAVER,	
For 8 days service as Sergeant-at-arms.....	24 00
To JOHN KERSHAW,	
To 8 days service as clerk.....	24 00

REPORT

OF THE

JOINT SELECT COMMITTEE,

Appointed to examine the Abstract of Votes given for Governor in October, 1848.

IN SENATE—January 17, 1849.

The Joint Committee appointed pursuant to a joint resolution of the General Assembly, to whom was referred the Senate joint resolution relative to appointing a committee to wait on the Governor elect, having been furnished by the Speaker of the Senate with the returns of the votes for Governor, transmitted to him, and having procured from the Secretary of State, the abstracts of votes for Governor returned to him, and filed in his office; your committee did carefully examine the said abstracts and returns, in obedience to said resolution, and now beg leave to

REPORT:

That upon such examination as directed by your said resolution, it appeared that the whole number of votes polled for Governor at the October election of 1848, was 297,943—that neither of the candidates for Governor had a majority of the votes; but Seabury Ford having received 148,756, and John B. Weller 148,445, Seabury Ford, therefore, had the highest number of votes for that office.

The returns of the votes for Governor from the county of Lorain, transmitted to the Speaker of the Senate, was not authenticated by the official seal of the clerk of the Court of Common Pleas of said county, though in all other respects, the said return was formal. Upon comparing said return with an abstract duly certified, and transmitted to the Speaker of the Senate, dated January 9th, 1849, as well as with the abstract of votes for Governor in said county, duly certified under the seal, and on file in the office of the Secretary of State, the

unsealed return was found to contain the correct vote polled for each candidate for Governor, in said county. The majority for Seabury Ford being 804, was therefore counted for him.

The return from the county of Defiance was found to be defective in this, the persons voted for, in that county, for Governor, are not named in the abstract of votes of certificate and return. The number of votes polled in that county for Governor, your committee believe are truly stated in the informal return aforesaid, therefore they were counted, as follows :

For John B. Weller.....	468
For Seabury Ford.....	308

Also, the returns from Crawford county. The defect appeared in the abstract, as being the vote of the township of Auburn, 84 votes given for Governor for Seabury. The committee being satisfied the votes aforesaid were given to Seabury Ford, and the mistake was occasioned by a defective return, the said 84 votes were therefore counted for Seabury Ford.

The abstract of votes for Governor, returned from Portage county, contains 137 votes for J. B. Weller for Governor. These votes were added to the aggregate vote of that county given to John B. Weller, as they ought to have been certified and returned to him in the first instance.

The correct vote for Governor within the limits required by law to be canvassed and certified by the clerk of the Court of Richland county, was ascertained by your committee, by the examination of a supplemental return from that county.

The canvassers and clerk omitted to abstract and return the votes of certain townships, now within the limits of the new county of Morrow, believing that the clerk of the Court of Morrow county would make the proper abstract and return. This mistake was corrected by the canvassers and clerk of Richland county, and a supplemental return and abstract was made: one of which was transmitted to the Speaker of the Senate, and the other to the Secretary of State. Although these votes were canvassed after the time allowed by law, yet your committee were satisfied, the votes so omitted were proper and ought to be counted. Therefore they were counted, as follows :

For John B. Weller.....	525
For Seabury Ford.....	173

With the corrections above indicated, your committee have ascertained the votes polled for Governor in the several counties in this State as appears from the returns produced by the Speaker of the Senate, and the abstracts obtained from the Secretary of State to be as follows :

For Seabury Ford	148,756
For John B. Weller.....	148,445
Scattering.....	742

Aggregate vote for Governor 297,943

From the foregoing, it appears that Seabury Ford has the highest number of votes cast for that office, and your committee do report accordingly.

In conclusion your committee beg leave to report back the said "Senate joint resolution, relative to appointing a committee to wait on the Governor elect," with one amendment, to wit: strike out the word "the" in the line and insert "Seabury Ford," so as when the said resolution is amended, will read "to wait on *Seabury Ford, Governor elect*," &c., and with that amendment, recommend its passage.

Your committee further beg leave to accompany this their report with a correct journal of their proceedings in committee, duly signed and certified by their clerk.

All of which is respectfully submitted,

L. SWIFT, Chairman.

CLERK'S ROOM,
COLUMBUS, Jan. 17, 1849. }

Agreeably to a resolution of the General Assembly of the State of Ohio, appointing a "committee of four members on the part of the Senate, and eight on the part of the House of Representatives, to examine and report the returns of votes for Governor; the returns made to the Secretary of State as well as those returned to the Speaker of the Senate, to ascertain who has actually received a majority of the votes polled for governor at the October election, 1848," met in the room of the clerk of the Senate on the afternoon of the 17th inst., and then and there proceeded to the discharge of their duty as pointed out in said resolution.

Mr. Ewing moved to proceed first to open and examine the abstracts of votes for Governor, about which there had been no dispute or question as to their legality, &c.

Mr. Goddard moved to amend, by striking out all and inserting,

"That the committee take up the counties in alphabetical order and ascertain the number of votes each has received for Governor, and that if the returns made to either the Speaker or the Secretary be incomplete or illy certified, or otherwise insufficient, that the committee then resort to the other, and ascertain, as well as they may, the actual vote."

The same gentleman demanded the yeas and nays thereon, which were ordered, and resulted—yeas 7, nays 5, as follows:

YEAS—Messrs. Beaver, Bigger, Goddard, Giddings, Marsh, Riddle and Swift—7.

NAYS—Messrs. Ewing, Leiter, Morris, Norris and Rædter—6.

So the amendment was agreed to.

The Chairman then proceeded to publish the votes for Governor, as appeared upon the abstracts returned to the Speaker of the Senate; and the clerk recorded the same, as will be seen by the abstract ac-

companying these proceedings. After having examined all the abstracts returned to the Speaker of the Senate,

Mr. Goddard moved that a committee be appointed to procure the abstract of votes for Governor on file in the office of the Secretary of State.

Upon which motion Mr. Roedter demanded the yeas and nays, which were ordered, and resulted—yeas 9, nays 3, as follows:

YEAS—Messrs. Beaver, Goddard, Swift, Bigger, Giddings, Morris, Marsh, Norris and Riddle—9.

NAYS—Messrs. Ewing, Leiter and Roedter—3.

So the motion was agreed to.

The Chairman appointed Messrs. Beaver and Bigger said committee.

The abstract from Defiance county not showing for whom the votes therein contained were given for Governor, but it being known by rumor and by other evidence that the said votes were cast for John B. Weller and Seabury Ford,

Mr. Goddard moved that the vote (468) contained in the said abstract, be counted for John B. Weller, and 308 (in the same abstract) for Seabury Ford.

Mr. Roedter demanded the yeas and nays thereon, which were ordered, and resulted—yeas 7, nays 5, as follows:

YEAS—Messrs. Beaver, Bigger, Goddard, Giddings, Swift, Marsh and Riddle—7.

NAYS—Messrs. Ewing, Leiter, Morris, Norris and Roedter—5.

So the motion prevailed, and the said votes were included in the abstract, for John B. Weller and Seabury Ford.

On motion of Mr. Goddard, the abstracts procured from the Secretary of State by the committee, were offered and compared with the general abstract as kept by the clerk, made up from the abstracts returned to the Speaker of the Senate.

In the abstract from Crawford county, 84 votes were returned for "Seabury," which were intended for Seabury Ford, as the committee were assured; therefore,

Mr. Goddard moved that the said 84 votes be counted for Seabury Ford.

Mr. Roedter demanded the yeas and nays thereon, which were ordered, and resulted—yeas 7, nays 5, as follows:

YEAS—Messrs. Beaver, Goddard, Swift, Bigger, Giddings, Marsh and Riddle—7.

NAYS—Messrs. Ewing, Leiter, Morris, Norris and Roedter—5.

So the motion was agreed to, and the said 84 votes were included in the abstract for Seabury Ford.

The abstract from the county of Portage, shows 137 votes returned for J. B. Weller. The committee being satisfied that the said 137 votes were intended for John B. Weller, they were accordingly counted for him, and included in the abstract.

The abstract from the county of Richland, previously opened by

the Speaker of the Senate, did not contain the votes given for Governor in the townships of Bloomfield, Congress, Perry and Troy, now attached to Morrow county ; therefore the supplemental abstract bearing date November 24th, 1848, (showing that the votes were counted on the 25th day of October, 1848,) was furnished, and the votes appearing thereon for John B. Weller and Seabury Ford, were counted for them, and included in the abstract.

An error of ten votes in the footing up of the votes for John B. Weller, in the abstract from Van Wert county, appearing, it was agreed that the said ten votes be counted for him, and included in the abstract, which follows :

OFFICIAL ABSTRACT

*Of votes given at an Election for Governor of Ohio, on the
Second Tuesday of October, 1848.*

COUNTIES.	John B. Weller.	Seabury Ford.	Scattering.	COUNTIES.	John B. Weller.	Seabury Ford.	Scattering.
Allen	954	685		Lucas	1126	1239	
Ashtabula	936	3405	25	Logan	1064	1660	14
Athens	1280	1639		*Lorain	1551	2155	
Ashland	2342	1316		Lawrence	676	948	
Adams	1553	1295		Lake	715	1606	6
Auglaize	955	379		Madison	691	1259	1
Belmont	2798	3169	9	Mahoning	2069	1269	2
Brown	2330	1871		Marion	1460	1302	
Butler	3574	2150		Medina	1835	1926	12
Carroll	1385	1596		Meigs	908	1201	1
Champaign	1446	1940		Miami	1686	2435	
Clark	1340	2407	4	Monroe	2218	1119	
Clermont	2640	2142		Montgomery	3436	3679	
Clinton	1108	1949		Morgan	2492	2441	
Columbiana	2739	2288	54	Muskingum	3167	4117	7
Coshocton	2095	1574	3	Mercer	537	346	
*Crawford ...	1558	835	84	Ottawa	267	173	
Cuyahoga	2290	3329		Paulding	162	59	
Darke	1580	1608		Perry	2076	1287	
Delaware	2006	2205	72	Pickaway	2076	1994	
*Defiance	468	308		Pike	831	770	
Erie	1112	1392	20	*Portage	2234	2249	
Fairfield	3573	2266		Preble	1456	2204	
Fayette	904	1147	1	Putnam	613	323	
Franklin	2934	2885	14	*Richland	3484	2054	
Gallia	978	1451		Ross	2204	2896	
Geauga	897	2005	41	Sandusky	1074	874	
Greene	1264	2192		Scioto	1067	1509	
Guernsey	2569	2525	296	Seneca	2071	1403	
Hamilton	9930	8307	8	Shelby	1153	1027	
Hancock	1320	868		Stark	3288	2431	
Hardin	544	557		Summit	1866	2489	5
Harrison	1678	2005	1	Trumbull	2028	3069	15
Henry	289	222		Tuscarawas	2359	2496	
Highland	2121	2212		Union	789	1070	
*Hocking	1228	707		Van Wert	320	155	
Holmes	2002	989		Warren	1864	2791	
Huron	1682	2135	12	Washington	1823	2266	3
Jackson	1061	824		Wayne	3256	2091	
Jefferson	2358	2374	1	Williams	484	269	
Knox	3224	2288	32	Wood	557	562	
Licking	3438	3269		Wyandotte	939	833	
Totals					148,445	148,756	742

Mr. Bigger moved that the committee take a recess until 9 o'clock to morrow morning, which was agreed to.

THURSDAY, 9 o'clock, A. M., Jan. 18, 1849. •

Mr. Roedter moved that the vote of Lorain county be rejected on account of the omission of the seal of the clerk of the Court on the abstract returned to the Speaker.

Mr. Goddard demanded the yeas and nays thereon, which were ordered, and resulted—yeas 5, nays 7, as follows :

YEAS—Messrs. Ewing, Leiter, Morris, Norris and Roedter—5.

NAYS—Messrs. Beaver, Bigger, Goddard, Giddings, Marsh, Riddle and Swift—7.

So the motion was lost.

Mr. Giddings moved the adoption of the report.

On which motion Mr. Roedter demanded the yeas and nays, which were ordered, and resulted—yeas 7, nays 5, as follows :

YEAS—Messrs. Beaver, Goddard, Swift, Bigger, Giddings, Marsh and Riddle—7.

NAYS—Messrs. Ewing, Leiter, Morris, Norris and Roedter—5.

So the report was adopted.

Mr. Ewing moved that the report be printed, which was agreed to. On motion the committee adjourned.

Attest:

J. R. KNAPP, Jr., Clerk.

REPORT

OF THE

COMMITTEE ON THE JUDICIARY.

MR. SPEAKER: The Committee on the Judiciary, to whom was referred Senate bill No. 56, "to give greater security to land titles in this State," report the same back, and recommend its engrossment and passage with amendmedts.

The first section of the bill gives jurisdiction to the courts of chancery to correct errors, frauds, and mistakes in the deeds and conveyances of husband and wife, intended to convey or encumber the estate of the wife or her interest in the lands of her husband, in the same manner that they are authorized to correct errors, mistakes, or frauds, in other conveyances.

A bill essentially the same as this first section, passed the Senate at the last session, without a dissenting voice, but was lost in the House of Representatives.

This first section proposes a change in the law. A brief exposition of what the law is at present, will not therefore be deemed irrelevant or unnecessary. By our present statutes, married women, with the consent and co-operation of their husbands, are as free to sell their real estate as any other members of society; and in a commercial and progressive age, a refusal of this power over their own property would be an intolerable grievance. The married pair are at full liberty to sell their estate; and if the conveyance is perfect in form, the deed will be binding in the same manner as any other deed, be the consideration adequate or inadequate. But if the instrument happens to be imperfect, if a seal or a witness is omitted, or if there is error or defect in the deed or acknowledgment, or a misdescription of boundaries, or any other mistake in the premises, which renders the instrument inoperative at law, it will be absolutely void, as to the interest of the wife, whether all or part—whether the total inheritance or a mere dower. The beneficial nature of the contract to the married pair, the largeness of the consideration, the perfect honesty and fair dealing of the purchaser, will avail him nothing. The same courts of equity which would readily reform error or mistake in the conveyance of a poor, unprotected girl, are in this case compelled, by the present state of the law, as explained in Carr against Williams, 10th Ohio Reports, to address the suitor for relief, in the language of hideous and unnatural fable.

Sir, it is well known that this married woman was a mere passive, unresisting slave, in the power of her husband—she had neither will, judgment, sense, or discretion of her own. It is true you gave a large price for this land, and the married pair have enriched themselves by the good use which they have made of the purchase money; but here is a mistake in their deed to you—names are omitted where they ought to have been inserted—you thought you were buying the whole inheritance, but you were too honest and confiding, you bought nothing but the life interest of the husband, and as he is now dead, we will send the power of the county to turn you, and your wife and little ones, out into the highway, shelterless, to the wintry winds, and may the Lord have mercy upon you, for the law will not.

That this is the actual, or rather the virtual, language of the courts to suitors in this unfortunate condition, whether male or female, married or single, who is hardy enough to deny? And yet there is no mutuality, for the courts readily relieve against errors, mistakes, or frauds, to the disadvantage of the married pair; and the doctrine itself is founded on a miserable exploded fable, as false as the Alcoran.

It is founded upon the idea that the married woman is in a situation very similar to that of a slave. This was formerly the case, but certainly is not at present. Even at the time when Blackstone wrote his commentaries, he gives us to understand that it was the undoubted privilege of Englishmen to inflict corporeal chastisement upon their wives, provided it was not so excessive as to endanger life or limb. He informs us that the nobility and gentry had, in his time, which was the latter half of the 18th century, become too refined to avail themselves of this privilege; but he adds that the common people felt no such delicacy, and were always much attached to the old common law. The exercise of this privilege, in the rudest district in Ohio, would soon provide dungeon lodgings, and bread and water diet, for the ruffian husband who would so far forget himself as to undertake it.

The married parties are, both by our laws and manners, placed upon a platform of complete equality. The violence of the husband towards the wife is just as unlawful as that of the wife towards him, and would probably meet with more prompt and severe legal animadversion. The masses in Ohio are, in this respect, more refined than the English nobility and gentry in Blackstone's time, and the criminal law has kept pace with our manners. The influence of the husband must arise from persuasion, and in this faculty he is commonly excelled by his fair partner.

There was still another reason for the old English decisions, which are thus implicitly and obsequiously followed by our courts. The alienations of married women were made by fine or recovery in courts of record, before professional judges, and with the aid of professional clerks; and of course few mistakes or errors were committed.

These, it is believed, are the reasons, and the only reasons, of the English rule, that errors, defects, or mistakes in the conveyances of married women, will not be inquired into or remedied. And neither of these reasons exists in Ohio. The husband has no legal power of

corporeal correction, and the deeds of married women are not drawn by skilful clerks in courts of record, but by persons skilful and unskilful in the country.

Yet this rule is as unquestionably law at the present day as if it were conformable to reason and common sense, and never fails to shock the moral faculties of the bystanders as often as it is applied.

Is it not an anomaly and an absurdity in jurisprudence to render one half of mankind perfectly capable of contracting and being contracted with, and yet render the courts of justice incompetent to inquire whether the equity of the case, and the intention of the parties, have not been defeated by mere slips in form? Does not such a rule of law dig a pitfall for the unwary? And are not the confiding and unwary likely to be the only sufferers? Is it at all likely that persons who meditate a fraud will be so incautious as to suffer their designs to be defeated by accident or inadvertence? Will not really fraudulent deeds be almost infallibly perfect on their face? If this most barbarous and inartificial rule of law ever works justice, must it not be by mere accident? Would it not be more reasonable to depend on the hazard of a die than on such a rule?

While it is admitted, that in mere abstract possibility, this rule may defeat a deed which ought to be defeated, it is due to the occasion to say, that the writer of these lines has never seen it operate in any other way than to build up fraud and injustice. It makes Courts and Sheriffs to become the ministers of sin and turpitude. It enables sons-in-law, speculators and barrators to rob families of their HOMESTEAD and their all, and operates as a direct premium to roguery! It is probably the most odious rule in our chancery code. But why may not purchasers of land resort to the county seats, and get their deeds skilfully drawn by legal men? Well, they might do it, but such is not the custom of the country, and it is a little too severe a penalty to make a man forfeit the labors of a lifetime, because he has been a little too confident in his own skill, or in that of a friend. Moreover, the honest yeomanry of the country are not aware of this old technical rule, which nearly always operates in calamity and distress to the honest and unwary.

The second section of the bill is intended to protect titles derived from public authority by means of Judicial and other sales, from old claims, which are brought forward in the hope of success from lapse of time, death and removal of witnesses, and loss and destruction of written evidence. In case of titles thus acquired and followed by actual and notorious possession, it requires the opposite claimant, if of full age, and of sound mind and at full liberty, to dispute his antagonist's title within seven years after notorious, adverse possession taken, or be forever barred. Actual and notorious adverse possession cannot be unknown to the opposite claimant. Then why should he not be compelled to bring his action, while the evidence is comparatively easy of attainment, and the danger of error as to facts, inconsiderable? Why should he be permitted to lay by almost half a lifetime, till the danger of error and injustice becomes imminent? Why should he

not be compelled to bring his action in seven years, or not at all? Is not that period long enough to enable him to form his resolutions and take counsel? What good reason can be rendered for permitting him to lay by for a longer period? It is believed, none at all. The idea of long limitation of actions for the recovery of land, is derived from feudal times, and owes its success to mere passive imitation and old custom.

If we want an impressive example of the mischiefs produced by the policy which this committee impugns, we have only to cast our eyes over to Western Virginia. Why is that naturally rich and beautiful country almost a wilderness? Why is its progress comparatively slow and almost imperceptible? It is by strangers ascribed to the supposed existence of slavery. But this is an error. Slaves do not and never did exist there in sufficient numbers to have any influence upon the habits or manners of the population. There are whole counties without a dozen slaves. The subscriber is well acquainted with one which has but five. Yet there is a cause, and a sufficient cause, for the poverty and backwardness of that district, and that cause is insecurity of property, defective land titles, the greatest curse ever inflicted on a community. This has arrested the sturdy stroke of the woodman. This has caused the axe and the sledge to fall from the stalwart hands of the bold pioneer, and has paralyzed the arm of industry, and deprived it of its rewards. It is true that dear bought experience has, quite recently, driven the Legislature of that State to adopt measures, much more radical and thorough than those proposed in the second section of this bill; but wisdom has arrived on that soil so lately, that her genial influence is as yet scarcely perceptible. Insecurity of land titles has not existed to so great an extent in Ohio; but just as far as it exists, it is an element of weakness, of poverty and of misery. Nor is it an evil of unfrequent occurrence even in Ohio. The subscriber has known sixteen declarations in ejectment returned to a single term in an eastern county—a most melancholy list.

The third section is intended to give more certain information to those whose lands are sold for taxes, so as to enable them to redeem within the two years. It will sometimes be the only effectual means of information to executors, administrators, guardians and purchasers. The practice prescribed in that section is said already to prevail in some counties, it certainly does not in others, and yet it ought to prevail in all. Some most distressing cases within the knowledge of the subscriber would have been remedied by such a provision enacted a few years ago. There can be no good reason for continuing land on the tax duplicates after it has been sold, and thus depriving purchasers, agents and representatives, of one effectual means of becoming acquainted with that important fact.

EDWARD ARCHBOLD,
Chairman of Judiciary Committee.

February 20, 1849.

REPORT

OF THE

STANDING COMMITTEE ON BENEVOLENT AND PUBLIC INSTITUTIONS.

The Standing Committee on Benevolent and Public Institutions to which was referred the petition and resolution of Thomas Stuart, guardian of Jonathan Stuart, a lunatic, praying that said lunatic be admitted into the Ohio Lunatic Asylum, "as a pay patient on the same terms with other pay patients who are citizens of this State," have had the same under consideration and now beg leave to submit the following

REPORT:

From an examination of the petition, it appears that said Jonathan Stuart is not a citizen of the State of Ohio, but if he have any known residence, it is either in the State of Indiana or Illinois; your committee, therefore, in order if possible to afford the relief sought for, provided it could be done without making an injury to any citizen of Ohio for whose benefit mainly the Institution was first established, called upon the Superintendent of the Asylum, to communicate to the Senate the following among other items of information, viz: "The number of applications now pending for admission into the Asylum, which have been delayed or postponed for the want of room in said Asylum for the persons so applying."

In reply to this inquiry the Superintendent sent in a written report, going back for a period of two years, prior to the date of said report, (January 18, 1849,) from which it appears that the number of applications pending at that date from the different counties in this State, and which had been delayed or postponed for want of room in said Asylum during the period aforesaid, amounted to the number of one hundred and forty-seven, (147,) of which number 82 are females, and 65 are males.

Much other useful information is contained in said report, bearing directly upon the subject; but which it is thought by your committee, unnecessary to advert to in this report. Your committee, however, in view of the facts contained in the report of the Superintendent, have unanimously come to the conclusion, that the prayer of said petitioner cannot be granted without doing manifest injustice to the citizens of the State, whose applications for admission into said Asylum are now

pending. In conclusion, your committee beg leave to submit the following resolution:

Resolved, That the Committee be discharged from the further consideration of said petition, and that the petitioner have leave to withdraw his papers.

All of which is respectfully submitted,

B. BURNS,
JOHN F. BEAVER,
SAMUEL PATTERSON,

R E P L Y
OF THE
SUPERINTENDENT OF THE OHIO LUNATIC ASYLUM,

To the Resolution of the Senate, passed on the 16th inst.

OHIO LUNATIC ASYLUM,
JANUARY 18, 1849.

To the Honorable Senate :

The undersigned has received a copy of the following resolution, passed on the 16th instant:

Resolved, That the Superintendent of the Ohio Lunatic Asylum, be and he is hereby required to communicate to this Senate, at his earliest convenience, the following information, viz:

1. The number of applications now pending for admission into the Asylum, which have been delayed or postponed for the want of room in said Asylum, for the persons so applying.

2. The dates of each application now pending, the counties from which such applications are made, designating whether such applicants are male or female, and the number of each.

3. The number of patients now in said Asylum (if any) who are not residents of the State of Ohio, the time said patient or patients have been in said Asylum, and the States from which they are sent.

4. Whether it is usual in admitting persons by joint resolution of the General Assembly, who are not residents of Ohio, and who are paupers, to accompany such applications with the papers required to accompany applications made under the 9th section of the act entitled an act to provide for the government of the Ohio Lunatic Asylum, passed March 13th, 1839.

Replying to the first and second heads in the resolution, I respectfully submit a list of the various applications on file for males and females, delayed or postponed for want of room in the past two years, which I have thrown into the form of a table for the sake of conve-

nience. There are others on file of a prior date, but I have not supposed it necessary to go further back than to 1846, in which year the new buildings were completed and opened.

Of the applications designated in the table, some are regular by county officers, some informal, some by the friends of patients, and many, doubtless, at this time, are of no consequence, as the persons in whose behalf they were made, have either recovered, died, or their circumstances so changed as no longer to require admission. But as to the number or proportion of them that may be of this character, I regret to say it is not in my power to give a definite reply without a laborious and expensive correspondence, extending to each case in the respective counties, which I presume was not the intention of the Senate. They were refused with great reluctance, or we should most cheerfully extend the benefits of the Institution not only to them, but to every other afflicted person in the State needing our care—the reason was the want of room, and because counties had obtained their full quota according to the regulations of the Statute, which requires us to apportion patients to the different counties, “having the least number under the charge of the Institution in proportion to their population.” In the table I have given the number now under care in these counties, in order to a more perfect explanation of the subject.

In the admission of patients, we have constantly endeavored to follow this requirement of the Statute as closely as may be practicable, so as to deal equitably with all parts of the State. To this end, the rule has been to admit whatever cases the different counties (or individuals in different counties,) may apply for, until their proportion according to population is fully made up; after that, we do not extend the allowance except for cases of recent occurrence—that is, when the insanity has not existed for a longer period than twelve months. This, with the constant demand which exists, was the only plan I could devise by which counties might be restricted to their proper proportions, and some room be at command to meet the recent and more urgent cases.

The duties connected with this apportionment of the patients, are attended with many perplexing difficulties, making it impossible for us to be rigidly or mathematically correct, or perhaps, to give entire satisfaction to the numerous individuals who feel interested for afflicted friends, and if some counties may appear to have more applications pending in proportion to population than others, it is because of the circumstances existing at the time they were made. Take for example the county of Cuyahoga, where three applications for females are marked as pending in the past year; during which time, we had seven and eight of their citizens under care as patients, of whom three recovered and were discharged—and one female has recently been ordered in addition to the number marked in the table.

The daily average number of patients in the Institution during the last year, was 337, and in the previous year, 318. The number recovered and discharged was 90 in 1847, and 93 in 1848. The whole number admitted in the two years, was three hundred and forty-four.

As respects the third and fourth points of enquiry in the resolution, I would respectfully observe, that we have no patients under care who have been non-residents (and not citizens,) of the State, nor are any such admitted to a participation of the benefits of the Institution, either by action of the legislature or in any other manner. Persons have at times been admitted by joint resolution of the General Assembly, who were residents but not citizens of Ohio, in which cases we have supposed it correct to require the same proceedings in all respects as are demanded of our own citizens, and have counted them in the quota assigned to the counties in which they have resided. At the present time there is but one instance of this kind in the Asylum, and that is the case of an unnaturalized foreigner, who is from the county of Summit.

Very Respectfully,

WILLIAM M. AWL,
Superintendent.

TABLE showing the number of applications delayed or postponed for want of room in the Ohio Lunatic Asylum.

Counties.	Males	Date of Application.	Females	Date of Application.	Total	Cases now in Asylum
Adams -----	-	-----	1	March 8, 1847	1	4
Allen -----	1	Jan'y 5, 1849	-	-----	1	2
Ashtabula -----	1	Jan'y 18, 1847	-	-----	1	6
" -----	1	Nov. 20, 1847	3	Feb'y 1, 1847	4	-
" -----	1	May 1, 1848	-	-----	1	-
Ashland -----	1	June 30, 1847	1	June 2, 1848	2	3
Belmont -----	-	-----	1	Aug't 21, 1848	1	9
Brown -----	1	May 10, 1847	1	Dec. 26, 1848	2	6
" -----	1	Sept. 27, 1847	-	-----	1	-
Butler -----	1	Aug't 14, 1847	1	Feb'y 8, 1847	2	8
" -----	1	April 27, 1848	1	Aug't 23, 1847	2	-
" -----	-	-----	1	Oct. 30, 1847	1	-
Clark -----	-	-----	1	April 30, 1847	1	6
" -----	-	-----	1	Dec. 8, 1848	1	-
Clermont -----	1	Dec. 11, 1847	1	April 15, 1847	2	7
" -----	1	Dec. 21, 1847	1	July 23, 1847	2	-
" -----	-	-----	1	May 30, 1848	1	-
" -----	-	-----	1	Oct. 5, 1848	1	-
Clinton -----	1	Feb'y 10, 1847	-	-----	1	4
Columbiana -----	1	Oct. 10, 1848	1	Jan'y 5, 1849	2	7
Coshocton -----	-	-----	1	Sept. 8, 1848	1	3
Crawford -----	1	March 1, 1848	-	-----	1	3
Cuyahoga -----	-	-----	1	June 30, 1848	1	5
" -----	-	-----	1	Sept. 18, 1848	1	-
" -----	-	-----	1	Dec. 30, 1848	1	-
Darke -----	-	-----	1	June 18, 1847	1	2
Delaware -----	-	-----	1	Aug't 29, 1847	1	4
Erie -----	-	-----	1	March 4, 1847	1	2
Franklin -----	-	-----	1	April 28, 1848	1	7
" -----	-	-----	1	July 11, 1848	1	-
" -----	-	-----	1	Aug't 1, 1848	1	-
" -----	-	-----	1	Aug't 22, 1848	1	-
Fairfield -----	1	May 25, 1847	1	June 2, 1847	2	7
" -----	-	-----	1	Oct. 6, 1847	1	-
" -----	-	-----	1	June 2, 1847	1	-
" -----	-	-----	1	Jan'y 1, 1849	1	-
Gallia -----	1	Sept. 13, 1847	-	-----	1	5
Geauga -----	1	June 7, 1848	1	March 18, 1848	2	5
" -----	1	June 17, 1848	-	-----	1	-
" -----	1	Aug't 15, 1848	-	-----	1	-
Greene -----	-	-----	1	April 14, 1848	1	2
Guernsey -----	1	July 10, 1848	1	April 28, 1847	2	6

TABLE—Continued.

Counties.	% Total	Date of Application.	% Total	Date of Application.	Total.	Cases now in Asylum.
Guernsey -----	1	Oct. 12, 1848	1	March 11, 1848	2	-
Hamilton -----	1	March 17, 1847	1	June 11, 1847	2	19
" -----	1	July 21, 1847	1	June 26, 1847	2	-
" -----	3	Sept. 4, 1847	1	June 29, 1847	4	-
" -----	1	April 25, 1848	1	Sept. 2., 1847	2	-
" -----	1	April 28, 1848	1	Nov. 17, 1847	2	-
" -----	1	June 3, 1848	1	May 13, 1848	2	-
" -----	1	June 10, 1848	1	Aug't 7, 1848	2	-
" -----	1	Aug't 22, 1848	1	Jan'y 11, 1849	2	-
Hardin -----	1	Sept. 7, 1847	-	-----	1	1
Highland -----	-	-----	1	April 16, 1847	1	6
Hocking -----	-	-----	1	March 3, 1847	1	3
" -----	-	-----	1	Nov. 22, 1847	1	-
Holmes -----	1	April 5, 1847	-	-----	1	3
Huron -----	1	Oct. 23, 1848	1	June 23, 1848	2	6
" -----	-	-----	1	Aug't 24, 1848	1	-
Jefferson -----	1	July 3, 1848	1	April 19, 1847	2	5
" -----	1	Sept. 21, 1848	-	-----	1	-
Knox -----	1	Dec. 7, 1847	1	Dec. 20, 1848	2	5
Lake -----	1	Nov. 22, 1847	-	-----	1	5
" -----	1	Dec. 29, 1847	-	-----	1	-
" -----	1	Sept. 27, 1848	-	-----	1	-
Licking -----	1	Aug't 22, 1848	-	-----	-	5
Lorain -----	-	-----	1	April 1, 1848	1	4
" -----	-	-----	1	June 23, 1848	1	-
Montgomery -----	1	Aug't 17, 1848	-	-----	1	7
Miami -----	1	Aug't 31, 1847	-	-----	1	5
" -----	1	June 27, 1848	-	-----	1	-
" -----	-	-----	1	May 26, 1847	1	-
Monroe -----	1	Aug't 4, 1847	1	Oct. 13, 1847	2	5
Morgan -----	1	Jan'y 8, 1848	1	May 15, 1847	2	4
" -----	1	Nov. 28, 1848	1	Aug't 15, 1848	2	-
Muskingum -----	1	Aug't 17, 1847	1	Nov. 1, 1847	2	7
" -----	1	March 24, 1848	1	Jan'y 4, 1848	2	5
" -----	-	-----	1	Oct. 27, 1847	1	-
Pickaway -----	-	-----	1	Sept. 22, "	1	-
Perry -----	-	-----	1	May 6, "	1	1
Pike -----	-	-----	1	Sept. 1, "	1	-
Preble -----	1	Jan'y 31, 1848	1	June 2, "	2	4
Portage -----	1	July 12, 1847	1	Febr'y 14, 1848	2	6
Richland -----	1	Aug't 27, 1847	-	-----	1	4
" -----	1	March 18, 1848	-	-----	1	-
Ross -----	1	Febr'y 12, 1848	1	Dec. 30, 1848	2	7

TABLE—Continued.

Counties.	Males.	Date of Application.	Females	Date of Application.	Total.	Cases now in Asylum.
Ross	1	Oct. 7, 1848	-	-----	1	-
Sandusky	1	Febr'y 29, "	-	-----	1	4
Scioto	1	June 13, "	-	-----	1	2
Seneca	-	-----	1	May 3, 1848	1	8
"	-	-----	1	Dec. 1, 1848	1	-
"	-	-----	1	Dec. 12, 1848	1	-
Stark	1	May 10, 1847	1	Nov. 22, 1847	2	8
"	1	Aug't 8, 1848	-	-----	1	-
Summit	1	May 12, 1847	1	May 11, 1848	2	4
"	-	-----	1	Aug't 28, 1848	1	-
Trumbull	-	-----	1	June 12, 1847	1	5
"	-	-----	1	Oct. 23, 1847	1	-
"	-	-----	1	Oct 7, 1848	1	-
Tuscarawas ..	1	March 6, 1848	-	-----	1	4
"	1	May 18, "	-	-----	1	-
Union	1	July 13, "	1	Jan'y 19, 1847	2	1
Wayne	1	Aug't 30, "	2	June 2, 1848	3	8
Washington ..	1	Jan'y 19, 1847	1	June 12, 1847	2	5
"	-	-----	1	Jan'y 22, 1848	1	-
"	-	-----	1	May 11, 1848	1	-

Total cases now in the Asylum..... 279

REPORT

OF THE

SELECT COMMITTEE ON HOMESTEAD EXEMPTION.

Mr. Dimmock, from the select committee to whom was referred the petitions of Seneca county, praying that family homesteads may be exempt from sale, on execution to pay debts, makes the following

REPORT :

That the exemption of the family homestead from sale for debts, is intended as a benign protection of the innocent and unfortunate from the severities of the law. Judicial sales of a debtor's real estate usually arises from his misfortune or his improvidence. In either case, the calamity falls most heavily upon the wife and children, who are innocent and helpless sufferers. The provision, therefore, is humane; in the light of political economy it is also wise.

The object of law is to promote public happiness—the sufferers from judicial sales form a large portion of the most numerous class of citizens; small farmers and traders, artisans, mechanics, manufacturers and laboring men, in towns and cities; and upon these fall most frequently and with greatest severity, the inevitable calamities of our race, such as disease, pestilence, revulsions of trade, commerce and manufactures. The happiness of this numerous class should not be contingent upon the chances of health or public prosperity. To secure their independence, the roof that shelters them should not be at the mercy of an employer, who, by withholding work can deprive them of bread, take away their home and force them asunder, to seek shelter where it may be found—or at the mercy of a creditor, who may force it to sale, and buy it himself, at a mere nominal price.

The homestead, then, should be a place of refuge, where the poor and weary may lay his head, with none to make him afraid—an altar where family love may always burn—a castle where the oppressor may not approach. Give permanence to the poor man's home, and he will be virtuous and independent—shelter his wife and offspring by an established homestead, and they will seldom become victims of vice, want or crime. Happiness, virtue, independence and the welfare of Republican Government; in the family homestead they must grow and expand, without it they must perish. So that security

to the homestead is one of the greatest ideas to be realized for the improvement of our race.

It is a lamentable truth, that the tendency of past legislation in Ohio, and in our National Legislature, has been to build up and protect capital at the expense of labor—to enhance the profits of commerce, manufactures, and mercantile, and speculative pursuits, and render the laborer, the agriculturist, and the poor mechanic, mere objects to be protected by the capitalists, than as being under the protection of government. In fact, the whole system of present class legislation seems to have been effected on the maxim ascribed to a distinguished statesman—let the government take care of the rich and the rich will take care of the poor!—The reverse should be the motto of all Republican Governments—“let government protect the poor—the rich will take care of themselves.” The object of all law should be “the protection of the weak against the aggressions of the strong.” And while in this State, every possible expedient is resorted to, in order to confer exclusive and important privileges upon bankers, and at the same time exempt them from the operation of just and wholesome laws it is high time that the hand of protection should be held out to the poorer, more numerous and more worthy classes of community.—And who are those who would reap the advantages of the Homestead exemption? The large class of citizens, and their families, who dig the wealth of your State from the soil—who build your roads and canals, who erect your noble edifices, and beautify your towns and cities—the first to take up arms in defence of your liberties—the same class of men who have carried us triumphantly through two wars at home, and carried the American flag triumphantly to the far south and west—placed it victoriously upon the ancient walls of Montezuma, and raised it in triumph on the shores of the Pacific. This is the class that will reap the most benefit from this law. The bulwarks of freedom in war—the pillars of government in peace. The miser, the moneyed Shylock, the banker, the speculator; it is against the ruthless touch of these wily men, that we ask the Homestead to be protected—yet we do not desire to prevent them from also securing its advantages.

Nothing tends to form a happy, contented, hard-working yeomanry, attached to their country and its institutions, so much as a direct and permanent interest in the soil they cultivate. So in an equal proportion, nothing can tend so much to enhance the happiness, virtue, family, family love, love, intelligence and independence of the people, as the certainty that amid all the revulsions of trade, all the speculations and competitions of commerce, the family Homestead cannot be wrested from them, and that they may improve and adorn it with flowers, vines and shrubbery; with fruit, shade and ornamental trees, and render it a rural paradise for the shelter of old age, and the retreat and enjoyment of innocence and youth—conscious that it is their own beyond all contingencies!

In a country like ours, where all classes are rushing into competitions in trade—in speculations of every grade and character, and where the whole currency of the country is under the control of cor-

porations, who can by "expansion," encourage the most dangerous and unlimited speculations; and by "contractions" at their will, produce the most overwhelming and disastrous revulsions; it is a truly wise and beneficent measure that will place the family homestead beyond the reach of all these conflicting elements! It is needless here to portray the sad and miserable condition of the unfortunate debtor, who has, with his wife and helpless children been driven from his home by the misfortune or improvidence of trade—every Senator's memory is full of such scenes! In times of speculation, we hear much of the fortunate makers of fortunes; but we hear nothing of the great numbers who suffer loss, except when some gigantic failure precipitates hundreds into distress and ruin—or when some pistol shot reveals the mental distress of some gambler, not the less one because he plays with the fictions of commerce and stocks, instead of dice. But in all such revulsions, thousands of poor laborers, farmers or mechanics must suffer while the millionaire who has ruined himself and them, wipes out all his obligations with a National Bankrupt sponge!

On whatever side we look, under every aspect in which we can view this subject, the same admonition stares us in the face! *Protect the Poor!*—and, above all, protect the homestead of the poor man's family. This admonition ought to be the most important study of the Legislator and of the Government. Protect the poor, for in their precarious condition they cannot contend with the rich without every day losing some of their advantages; protect the poor that they may keep by law, by custom, by a perpetual exemption, rather than by competition—that source of rivalry and hatred—that interest in the soil which the God of nature designed they should retain, and to which their toil entitles them; that they may rest in security, increase in knowledge and virtue, and become what they ought to be, the very pillars of our government.

But to return from this digression. The exemption of the family homestead from judicial sales, seems to be a measure demanded by justice and humanity, as well as the progressive spirit of the age.—How to realize it by practical effect, seems at first to be difficult. But, under the Ohio Laws, it is a question of easy solution, and the measure may be carried out in perfect harmony with existing laws, with very slight additional provisions. The first step is to render it equal to all who may need its provisions. Some standard must therefore be adopted. Quantity of land cannot form the measure, because the value varies. The value of the homestead must therefore be measured by money, the universal standard. Six hundred dollars will be found an average value of the homesteads in towns and country, of traders, farmers, mechanics, manufacturers and laborers, needing this protection. This sum may therefore be assumed as a standard.

As the law cannot bestow property, but only secure its possession, the fact must first be ascertained that the property proceeded against is the family homestead, and also its value. This can be done by the same inquest and proceedings, by which under existing laws, lands are appraised before sale. If the property be a homestead, and not exceeding the value of six hundred dollars, the fact being found under oath

and officially returned, the law may therefore declare its exemption from sale. But the rights of debtors and creditors depending upon these findings, it shall be subject to full investigation in open court, upon cause shown by either party. By this means security may be furnished to the debtor, and justice to the creditor, in accordance with the provisions of law.

But it may often happen that the homestead exceeds six hundred dollars in value. Is the debtor to go unprotected? By no means; in such cases the property will generally be capable of division. So much, therefore, may be set off for the homestead, as will equal the standard adopted, leaving the residue for sale.

It may sometimes happen that no division can take place. In such case the debtor can claim no protection, because if he was allowed to retain it all, the homestead exemption might become the means of injustice, and perhaps fraud; and besides, it is the debtor's own act, that from pride, luxury, or other motive, he has chosen to adopt as a homestead, what the law cannot, without injustice, protect. The law can seldom provide for every case, and the practical legislator will only seek to obtain the largest practicable amount of good. He will not, or should not, be deferred from doing what is in his power, because he cannot obtain universal good. The law should, then, provide that where the property exceeds six hundred dollars in value, an allotment shall be made by the same officers, where it can be done so as to afford protection. To secure justice to both debtor and creditor, this allotment is subject to the revision of the Court.

It is not only during the debtor's lifetime that the homestead should be protected. After his death, by existing laws his real estate is subject to sale for debt, by administrators. And it is a singular inhumanity of the law, that when death removes the head of a family, his wife and children shall have no longer a roof to shelter them. No sooner has death borne out the father, leaving in dismay and agony a heart-stricken wife and helpless children, than the law stalks in to cast them out, a prey to want and misery. And thus it often happens that a mother is hurried to the grave, leaving the sons and daughters no resort but vice and crime—no home but the broad world before them! If there is any time when the homestead should be inviolate, let it be so to the widow and orphans. Accordingly, the law should provide that it shall not be subject to sale by administrators, and the same means adopted as in other cases, to afford that protection.

In all cases of this character, the intent and subject matter and persons to be operated upon, should be clearly as possible defined, so as to give certainty and uniformity to the rights sought to be established. The persons for whose benefit it is to be protected, and the duration of that protection should be defined by the law.

The family are the chief objects of care, the source of blessing, and the principal sufferers from want, and chief objects of protection. During the debtor's life, the family may consist of the wife, alone, or only of children, or of both; so after his death, the family may consist of his widow, or of his children, or of both. So long as any remain, the sacred character of the homestead should protect and shelter them.—

In case of both parties being dead, the homestead continues to be protected only until the youngest child becomes of age, and no longer.— For in the order of nature, children usually, upon attaining full age, and often before that time, acquire for themselves a home. Now, the object of the law should be, only to furnish protection where protection is needed. That necessity ceasing, the property becomes subject to the payment of debts. In some cases, children need a home after attaining full age; but, as before remarked, all cases cannot be provided for. The general good only, and not the universal, is attainable.

Finally, in this, as well as other cases, due respect should be had to existing debt; all existing liens are, therefore, protected by the provisions of this bill. It may be said that this provision should extend not only to liens actually acquired, but to contracts made. To this may be answered, that contracts only imply a personal obligation, and in general create no lien upon property. Whenever a lien has been contracted by a legal act or specific agreement, then it is preserved—and to limit the operation of the law in any other case, would occasion difficulties in its application, greatly impairing its beneficial design.

It is believed that the provisions herein advocated, with such amendments as wisdom and prudence may dictate, will make one more advancing step towards the true design and proper objects of governments.

All which is respectfully submitted.

A. G. DIMMOCK,
JOHN F. BEAVER,
JOEL W. WILSON.

R E P O R T
OF THE
COMMITTEE ON PUBLIC WORKS AND PUBLIC LANDS,
ON SENATE BILL NO. 167.

The Committee on Public Works and Public Lands to which was referred Senate Bill, No. 167, to provide for the extension of the Western Reserve and Maumee Road, and also certain petitions praying for the same object, has had the same under consideration, and now

R E P O R T :

The bill proposes, in substance, that the Board of Public Works shall lay out and establish a turnpike road from the Eastern termination of the Western Reserve and Maumee Road, to Cleveland; the expense of construction to be paid out of the surplus tolls of the road. The petitions suggest in addition, that should the tolls prove insufficient, the road taxes ordinarily expended upon that route, be appropriated to the same object.

It is not easy to conjecture why this bill proposes that the road shall terminate at Cleveland. If extended at all, there would seem great reason for its continuance through the counties of Geauga, Lake and the great county of Ashtabula to the Pennsylvania line. The three last named counties have not participated in any of the direct benefits flowing from our public works.

They have heard of canals and river improvements—of subscriptions to railroads and turnpikes, but their only sensible and direct appreciation of the matter is in the annual visits of the tax gatherer. Then they feel that they belong to a great State, which has prosecuted great enterprises at a great expense.

It is obvious, therefore, that could this bill meet with favor at all, it must be in an amended shape authorizing the extension of the road a much greater distance.

The committee, however, view this bill as a proposition for the State to engage again in the work of internal im-

provement; and should it pass, apprehensions might reasonably be entertained that applications would soon appear for the extension of the Walhonding canal to Mount Vernon or Mansfield, the Hockhocking canal to the Ohio River, and the National Road to the Indiana State line. All these might be commenced with the specious idea of appropriating only surplus tolls, but would end in the contracting of new debts, and lead ultimately to the overthrow of the credit of the State.

In the opinion of the committee, the State of Ohio is bound to give a solemn pledge to her own people—who, to sustain untarnished the honor of the State, have borne, and still bear an enormous weight of taxation—that the public debt shall never be increased, and that no new loans shall be created but for the purpose of paying old ones. An unyielding adherence to this policy, will maintain the credit of the State upon such a basis that a sensible diminution of the public burthens may be anticipated after the year 1850 in an exchange of six per cent. for five per cent stocks, or in the negotiation of a new loan at six per cent., but with such a premium as will be equivalent to the difference of interest.

Entertaining these views, the committee is adverse to the passage of this bill, and recommend the adoption of the following resolutions:

Resolved, That the Committee on Public Works and Public Lands, be discharged from the further consideration of Senate bill No. 167, and the petitions on the same subject.

Resolved, That Senate bill No. 167, to provide for the extension of the Western Reserve and Maumee Road, be postponed indefinitely.

REPORT

OF THE

JUDICIARY COMMITTEE,

On Mrs. Alpa Buck's Petition for a Divorce.

Mr. Speaker : The committee on the Judiciary, to whom was referred the petition of Mrs. Alpa M. H. Buck, alias Alpa M. H. King, have had the same under consideration, and now most respectfully ask leave to report :

That the petitioner, who appears to be worthy and respectable, charges her husband, John King, from whom she prays to be divorced, with habitual intemperance, wilful desertion and a subsequent illicit marriage with another woman. These are crimes unquestionably sufficient to produce a decree of divorce, if presented properly to a judicial tribunal.

Having thus been invited to decide a judicial question, the committee has deemed it a fair occasion to inquire whether the General Assembly ought to entertain bills of divorce, and the result of the inquiry is a conviction in the minds of the committee that such bills ought not to be entertained. It is to be remarked that nearly all, perhaps quite all the applications to the Assembly for this kind of relief are founded on some fact perfectly capable of dispute and litigation. Adultery, extreme cruelty, desertion, habitual drunkenness, or gross neglect of duty, is ordinarily alleged by the petitioner as a ground for legislative interference. As each of these constitutes a fact in its own nature capable of dispute, the petitioner generally undertakes to prove the case by presenting depositions, and sometimes mere *ex parte* affidavits. We shall not pause to remark how unfaithworthy such testimony is. That the Assembly is often in fact deceived, few men acquainted with the subject will be hardy enough to deny. The unfitness of the General Assembly for the investigation of facts in dispute between mere private parties, is most apparent and unquestionable. For such investigations, it is an expensive and unwieldy body, every way unapt and unsuitable. No legislator engaged in framing a new constitution would for a moment think of constituting a court so numerous. Besides, as the people pay their taxes as the price of social order, it may at least be questioned whether the members of Assembly can fairly and honestly desert their appointed and appropriate legislative functions, and engage in settling mere private disputes between

individual parties. A single divorce bill sometimes occupies the Assembly two or three days. This train of reasoning goes to show that it is highly inexpedient for the Assembly to undertake this task.

But when we open the constitution and read in the first section of the third article that "the judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme court, in courts of common pleas for each county, in justices of the peace, and in such other courts as the legislature may from time to time establish," we are compelled to announce that in thus invading the province of the judiciary the Assembly is passing beyond its constitutional boundaries. We are compelled to say, emphatically, that in the judgment of the committee, the General Assembly does not possess the constitutional power to grant divorces. We pronounce this opinion with less diffidence, because the conclusions of the committee have been fortified by a late decision of the supreme court.

In the case of ————, decided at the late term of the court in bank, the judges, after a train of argument apparently unanswerable, say, in the language of bold and masculine good sense, that "the Legislature in granting divorces, have not only assumed a power not delegated to them, but have usurped a power expressly conferred upon the judiciary."

Entrenched behind such a bulwark, the committee might well repose in the security of their position without further exertion, but the committee cannot forbear to warn the Senate, that there is cogent reason to believe that in passing divorce bills we violate the constitution of the United States, which prohibits the States from passing laws "impairing the obligation of contracts." Some gentlemen for whom we entertain feelings of high respect, have at times argued that marriage is not a contract, but a kind of nondescript relation between two individuals of the opposite sexes. We admire this opinion for its boldness, but we are compelled to regard it as an exhibition of overheated zeal. We may ask those gentlemen, if marriage is not a contract, what is it? All writers on jurisprudence, and Blackstone amongst the rest, so denominate it. It has all the ingredients of a contract; which is defined by jurists to be an agreement between two or more competent persons, upon sufficient consideration, to do, or abstain from doing, that which is the object of the pact. What ingredient of a contract is wanting in an agreement to marry? It is the consent which constitutes the marriage; the nuptial ceremony is only the authentic and notorious evidence of that consent, provided by the wise and benign policy of the law.

A deed may be perfect without the acknowledgment, but the same legal policy demands that ceremony for the sake of authentic and notorious evidence in so grave a matter. The phrases "fraudulent contract, precontract, duress," &c., perpetually recur in the works of writers on jurisprudence, for how else would they treat intelligibly on such a subject? The marriage contract has one ingredient which does not enter into other contracts. It cannot be rescinded even by the common consent of both parties. But this is unquestionably a provision to secure the interests of third persons, to wit, the common offspring.

If marriages were ordinarily barren, the compact would not possess this feature. But though the compact of marriage is indissoluble at the mere will of the parties, yet courts of justice are in the habit of decreeing a dissolution, for the self same reason that stimulates them to action in other cases, to wit, that one party has been culpably regardless of its terms. The maxim of the courts is, that a party who has been recklessly unmindful of his own engagements, cannot complain when the other contracting party is released from his. This maxim is applied in divorce cases precisely as in other cases. Every petition for divorce presented to the General Assembly is founded on this idea. Those petitions uniformly allege a violation of the contract by the party complained of, or his having become utterly incapable of fulfilling its terms. Did any member of the Assembly ever see a petition for divorce without such allegations?

Did circumstances permit the committee to enter into the general considerations suggested by the subject, it would be easy to grow eloquent on such a theme. The interests of civilization, of morality, of religion, are all sported with whenever and wherever the marriage relation is lightly esteemed. But the committee will not further speak of the sacredness of the nuptial relation and its importance to human happiness. Its sacredness and its importance are unspeakable. We ask to be discharged from the further consideration of the subject.

EDWARD ARCHBOLD,

Chairman Judiciary Committee.

REPORT

OF THE

STANDING COMMITTEE ON THE PENITENTIARY.

The standing committee on the Penitentiary, to whom was recommended a resolution of the Senate, with instructions to inquire into the number of convicts who have been pardoned out of the Penitentiary by Gov. Bebb during his official term, the names of the persons so pardoned, the names of the counties from which they were sent, the crimes of which they were convicted, the time for which they had been severally sentenced, together with the unexpired term, beg leave to make the following report.

TABULAR STATEMENT of the number of convicts pardoned out of the Penitentiary by Gov. Bobb, their names, counties from which they were sent, crimes, term of sentence, together with their unexpired terms.

No.	Names of Convicts.	Counties.	Crimes.	Term of Sentence.	To Serve.
1	Lemon Gifford	Adams	Arson	5 years.	Y'rs. M's. D's.
2	Frances Meyer	Hamilton	Receiving stolen goods	2 "	3 9
3	Henry Youngheart	Portage	Assault with intent to murder	3 "	1 7
4	Anthony Sinewart	Do	Do do	3 "	1 9
5	Sebastian Stonebraker	Butler	Horse stealing	3 "	1 8
6	Geo. McLean	Hocking	Passing counterfeit money	3 "	1 8
7	Hugh McMullen	Cuyahoga	Riots	1 "	5
8	John Hopkins	Do		3 "	1 13
9	James Doyle	Lorain		5 "	3 16
10	Benjamin Ayres	Hamilton		5 "	1 3
11	Jonathan Crush	Columbiana		3 "	9 7
12	John Gross	Hamilton	murder	5 "	1
13	Royal Reed	Lawrence		6 "	2 16
14	James Kinney	Lucas	pe	3 "	7 25
15	Robert Crane	Preble		1 "	
16	Luther J. Saper	Hamilton	notes in possession	10 "	7 11
17	Daniel Forshell	Preble		3 "	3 17
18	John Meloy	Do		3 "	7 7
19	Wm. Hammond	Cuyahoga	Do	3 "	2
20	James Sitch	Fairfield	Do and larceny	4 "	1
21	Peter Karney	Hamilton	Do	3 "	2 5

22	Rodney Logon	Hamilton	Burglary	4	"	1	6
23	John Wells	Do	Assault and rape with intent to murder	20	"	12	7
24	Alexander Price	Montgomery	Murder in 2d degree	Life.		5	6 served
25	Andrew Rider	Hamilton	Arson	21 yrs. 8 ms.		14	3
26	John Conklin	Do	Biting, &c.	1 year.			9 15
27	Eli Harkins	Muskingum	Grand larceny	2	"		2
28	Thomas Whaley	Wayne	Horse stealing	5	"	2	
29	Wm. Coon	Scioto	Manslaughter	3	"	1	11
30	James Richards	Harrison	intent to kill	15	"	5	
31	Hiram Hue	Portage		3	"		2
32	Wm. Leonard	Jefferson	Forgery	3	"	1	4 20
33	James Stackhouse	Monroe	Horse stealing	3	"	2	6
34	Peter Silas	Hamilton	Raid	3	"	1	5
35	George Warner	Lawrence	in possession counterfeit bank r with intent to pass	10	"	5	4
36	John Dorbety	Hamilton	Having counterfeit money	6	"	1	6
37	Geo. Brown	Do	Grand larceny	4	"	3	3
38	Wilner Iddings	Do	Do	3	"	2	1
39	Emery Hungerford	Athens	Forgery	9	"	2	11 18
40	Samuel Painter	Columbiana	Horse stealing	3	"		8
41	Peter Swineheart	Hamilton	Grand larceny	1	"		14
42	Jessee Jones	Do	Do and receiving stolen goods,	12	"	7	2 12
43	Henry Case	Butler	Horse Stealing	5	"		1
44	Sarah Harp	Warren	Larceny	5	"		2 8
45	Wm. Mills	Hamilton	Grand larceny	3	"	1	11 20
46	Isaac Harris	Do	Rape	12	"	1	7
47	James Dewell	Do	Grand larceny	4	"	3	4 20
48	John Stinton	Do	Passing counterfeit money	8	"		5

TABULAR STATEMENT—Continued.

No.	Names of Convicts.	Counties.	Crimes.	Term of Sentence.	To Serve.
					Y'rs. M's. D's.
49	Archibald Dorsett	Gallia	Burglary	3 years.	1 6 8
50	Joseph Sparrowgrove,	Monroe	Assault with intent to kill	2 "	1
51	Henry Kelley	Lawrence	Maiming	3 "	1 8
52	Peter Francisco	Erie	Burglary and larceny	4 "	1 5
53	Peter E. Noyes	Washington	Uttering & publishing counterfeit b'k bills,	10 "	5 11
54	David Wolf	Pickaway	Horse stealing	4 "	1 11
55	John Davis	Hamilton	Grand larceny	4 "	10
56	Miller Corey	Do	Do	5 "	1 8
57	Samuel D. Towner	Cuyahoga	Receiving stolen goods	7 "	3 9
58	Wm. Knowles	Delaware	Horse stealing	6 "	4 11
59	Patrick Ryan	Henry	Manslaughter	10 "	4 9
60	Henry B. Gilbert	Cuyahoga	Burglary and larceny	3 "	2 17
61	John Devine	Tuscarawas	Forgery	4 "	3 8
62	James M. Snyder	Do	Do	4 "	3 8
63	Wm. Sharp	Do	Do	4 "	3 8
64	Hiram Hubbs	Harrison	Passing counterfeit money	3 "	3 10
65	Thomas Marsh	Hamilton	Grand larceny	7 "	1 6 12
66	Wm. Gilmore	Meigs	Burglary	4 "	3 3
67	Peter Moore	Logan	Bigamy	3 "	7 7
68	James Gorman	Gallia	Horse stealing	7 "	6 6
69	Samuel Johnson	Hamilton	Robbery	15 "	3 2
70	John Edwins	Athens	Forgery	4 "	3 11

71	Geo. W. Wilson	Hamilton	Grand larceny	3 years.		2	
72	Garner Miller	Summit	Passing counterfeit coin	3 "		3	9
73	Sam'l P. Collins	Coshocton	Stabbing with intent to kill	2 "	1	7	
74	Geo. Tracy	Highland	Burglary	5 "	3	7	17
75	Solomon Dutcher	Miami	Counterfeiting	3 "	1	10	
76	James Steebman	Clermont	Horse stealing	3 "	2	6	
77	John Knowles	Delaware	Horse stealing and larceny	10 "	8	7	
78	James Young	Franklin	Perjury	5 "	2		
79	David Pierson	Hamilton	Horse stealing	10 "	1	3	
80	Wm. Barevise	Do	Burglary	7 "	3	8	
81	John Monroe	Do	Attempt to commit rape	7 "		11	
82	John Lockhart	Do	Grand larceny	2 "	1	9	
83	John S. Carner	Do	Putting off counterfeit b'k notes & arson,	35 "	28	3	
84	Andrew Pember	Lorain	Burglary and larceny	8 "	4	8	
85	Wm. Seaman	Warren	Do do	4 "	1	10	
86	Theodore K. Church	Hamilton	Manslaughter	4 "	2	8	
87	James Dailey	Lucas	Rape	4 "		3	
88	Stephen R. Call	Lorain	Burglary	4 "		2	
89	James Johnson	Shelby	Do	3 "	2	10	
90	Zenhaniah Porter	Scioto	Do	3 "	1	4	
91		Lorain	Horse stealing	15 "	1	1	
92	Aaron Foreman	Muskingum	Assault with intent to murder	3 "	1		8
93	Wm. Shoop	Washington	Burglary and larceny	3 "	2	11	
94	John Tracy	Do	Do do	3 "	2	11	
95	Luther Britton	Geauga	Murder in 2d degree	Life.	2	4 served.	
96	John Snively	Hamilton	Grand larceny	4 years.	1	5	
97	Jonathan T. Ward	Preble	Larceny and stealing promissory note	2 "	1	5	17.
98	James Haynes	Cuyahoga	Burglary	4 "	1	1	

TABULAR STATEMENT--Continued.

No.	Names of Convicts.	Counties.	Crimes.	Term of Sentence.	To Serve.
99	Lewis Bennett.....	Warren.....	Burglary.....	4 years.	Y'm. M's. D's.
100	John I. Sprague.....	Miami.....	Forgery.....	3 "	1 2
101	Isaac Mathis.....	Montgomery.....	Grand larceny.....	1 "	2 4 18
102	Wm. H. Jackson.....	Hamilton.....	Do.....	5 "	1 6
103	James W. Webb.....	Lawrence.....	Burglary.....	3 "	1 9
104	Charles Dewitt.....	Hamilton.....	Grand larceny.....	4 "	11 9
105	Silas Trowbridge.....	Portage.....	Horse stealing.....	3 "	2 6
106	Albert G. Clark.....	Sandusky.....	Burglary and larceny.....	5 "	1 6
107	Wm. Baker.....	Athens.....	Arson.....	10 "	7 8
108	Jacob Goodwin.....	Hamilton.....	Burglary.....	10 "	7 9
109	Francis Walters.....	Stark.....	Uttering & publishing counterfeit bk notes, Burglary.....	3 "	2 11 12
110	Charles Wagner.....	Pickaway.....	.....	3 "	1 11
111	Thomas Willis.....	Hamilton.....	.....	3 "	2 8
112	Wm. Thomas.....	Greene.....	.....	3 "	1 3 15
113	Wm. Atkinson.....	Hamilton.....	money.....	5 "	1 19
114	Wm. Adams.....	Clermont.....	Horse stealing.....	3 "	1 4
115	John Smith.....	Hamilton.....	Do.....	3 "	1 1 17
116	Aden O. French.....	Do.....	Passing counterfeit money.....	10 "	3 8
117	Michael Salesberry.....	Lucas.....	Horse stealing.....	8 "	6 6

LAURIN DEWEY, Warden.

Very respectfully, &c.,
To Messrs. CLARPOOL, GRAHAM, and LAWRENCE, Senate Committee on Ohio Penitentiary.

REPORT

OF THE

COMMITTEE ON PUBLIC WORKS AND PUBLIC LANDS, ON MEMORIAL OF JAMES DURBIN.

IN SENATE—*March 8, 1849.*

The committee on Public Works and Public Lands, to which was committed the memorial of James Durbin, praying for the payment of interest upon a certain check for work done upon the Wabash and Erie canal, under the act of 1842-3, to provide for the payment of the domestic creditors of the State, has had the subject under consideration, and now report.

The act referred to was passed March 13, 1843, and may be found with the general laws, Vol. 41, page 80. The committee will not detain the Senate with a recapitulation of its provisions.

The committee has had some difficulty in arriving at the true state of the facts in this case, but believes the following may be assumed as true :

The memorialist, James Durbin, and Ogden Mallory, were the contractors upon the Wabash and Erie Canal, for the construction of sections 49, 53, 56, and 57.

Ogden Mallory assigned his interest to Plues & Whiting, having previously agreed upon a division of the work with Durbin.

The work was completed Nov. 15, 1842, and by the terms of the act above referred to, the contractors were entitled to interest from that date to the time of payment. Large sums were paid to these and other contractors, with interest computed from the completion of their contracts to June 10, 1843, or to October 1, 1843, according as they received payment at one or the other of those periods.

The last check issued for work done upon this contract, by Mr. Dickinson, the acting commissioner, is No. 2165, for \$5,947 51, and dated Oct., 17, 1843, and the estimate of Andrew Young, resident engineer, which this check designed to pay, bears date April 15, 1843. The check was not paid till Feb. 15, 1845, and was paid without interest, the fund for the payment of which was exhausted.

The committee does not understand why the estimate and check bear so late a date, nor why a period of six months intervenes between their respective dates. The evidence is satisfactory that the work was completed the preceding November, and the committee is disposed to believe that there ought to be no just inference against the claim of the

memorialist drawn from the fact that the estimate and check bear so late a date.

Had the check been drawn at the same time with the estimate, and been immediately presented to the Fund Commissioners, the holder would have received his money with interest to Oct. 1, 1843—that is to say, he would have received one-third of his money on the 10th June, and a certificate for the other two-thirds, bearing interest, and payable October 1. On the first of October this interest fund was exhausted, and had he presented his check at its date, he would have received the face of it without interest. The delay in presenting the check for payment is explained by the fact that litigation had arisen between these several contractors and assignees as to the right to the money. This obviously presents no ground for a claim for interest against the State.

But the period between the 15th November, 1842 and October 1, 1843, rests upon different principles. If the committee is not mistaken in the facts, the State has gained and these contractors have lost the interest for this period, and it ought to be paid. The interest on \$5,947 51, from November 15, 1842 to October 1, 1843, is \$312 24, and this, in the opinion of the committee, is the extent of the rightful claim of these contractors.

The check is payable to Samuel M. Young. The memorialist, however, has a written authority from him. He also produces certified extracts from proceedings in chancery in the Supreme court of Lucas county, in a suit wherein he was the complainant and Plues & Whiting and others were defendants, but it does not distinctly appear that the memorialist is solely entitled to that money, and the resolution with which this report concludes is therefore so drawn that the payment may be made to the right person. To guard also against mistakes as to the facts in the preceding report, the committee has made the payment contingent upon the Board of Public Works being satisfied that the work was completed Nov. 15, 1842.

The committee therefore recommend the adoption of the following resolution:

Resolved, by the General Assembly of the State of Ohio, That the Board of Public Works be and it is hereby authorized and required to pay to James Durbin, or such other person as may, in the judgment of the board, be entitled thereto, the sum of \$312 24 being interest from November 15, 1842, to October 1, 1843, on \$5,947 51, amount of check No. 2165, drawn by R. Dickinson, acting commissioner, October 17, 1843, in favor of Samuel M. Young, for work done on sections 49, 53, 56 and 57, under the contract of Ogden Mallory and Durbin, on the Wabash and Erie Canal: Provided that the Board is satisfied that the work, for the payment of which said check issued, was completed on or before November 15, 1842.

REPORT

OF THE

SELECT COMMITTEE APPOINTED TO EXAMINE THE ACCOUNTS AND RETURNS OF THE COLLECTORS UPON THE STATE CANALS, &c.

The Select Committee appointed to "examine the accounts and returns of the Collectors upon the State Canals, filed in the State Auditor's office, and in what manner the said accounts and returns have been examined and compared in said Auditor's office, and report to the Senate what action, if any, they deem necessary in relation to said accounts and returns,"

REPORT:

That their time has been so fully employed in the discharge of other indispensable official duties, that they have had but very little time to devote to the examination for which the committee was appointed. The committee availed themselves of the assistance of a spare clerk, for whom the clerk of the Senate at the time, had not full employment, who has continued, up to this time, in making such examinations as the committee directed, but as he was entirely unacquainted with investigations of the kind, he was not enabled to make anything like a thorough, systematic examination into the accounts and returns,—but enough has been done to satisfy your committee that the entire business of the collection of tolls upon the canals—the manner of keeping the accounts and making returns to the Auditor's office; and the examinations of the accounts and returns in that office, has been from the commencement to the present time very loose and imperfect, so much so that great losses to the State may have accrued without the means now of detection; in the first place, the checks kept by collectors upon each other, have been so defective, that if dishonest, they could purloin large amounts in the course of the year without the fear of detection. As an illustration, the committee will refer to a few cases; the collector at Cincinnati, or the collectors at any intermediate office, clears a boat and its cargo through to Toledo; the boat arrives

at Toledo, where, on the discharge of her cargo, it is found to overrun largely what it was cleared for, and the collector at Toledo receives the toll on the surplus, and all the toll upon the passengers, for the trip through is paid at the end of the route. For these amounts there has not been any check upon the collector who receives it, unless it being his duty to enter it upon his certificate book, be considered a check, but which in fact amounts to very little if anything in the way it has been done.

A salutary check could be easily instituted, by requiring the collector at the end of the route to put upon the clearance of the same boat on her out-trips all that was received on her in-trips, which would then be charged to the collector receiving it, by the first collector in route; and the collector, however dishonest he might be, would not be likely to make a false entry upon the clearance, as the clearance would be carried to the next office by the same person who paid the tolls, or who would at least always know what was paid, and would be very likely, in case a smaller sum was entered upon the clearance, than what was actually paid, to detect the fraud or error. Again, all sums received for boats navigating the canals between offices, should be put on the clearance of some other boat which is to pass the office of a collector next to the one receiving the toll, designating for what it was paid and the name of the boat on which it was paid; this would, as far as the collector of tolls is concerned, cause every cent received by one collector to be charged to him by the next collector on the route, and form as perfect a check as possible. The accounting for fines collected is if possible more loose than that of the tolls above mentioned; the collectors do not only omit to enter the fines upon the clearance of the boat for the delinquences of which they are collected, but do not even enter them upon their certificate books, except sometimes in *pencil* mark; neither do they enter them upon the rolls returned to the Auditor's office as a general thing, but merely return, (if they return them at all,) in their weekly abstracts. Fines should in all cases be entered upon the clearance of the boat on which they are received, and entered regularly upon the certificate book, and signed by the captain, and returned to the Auditor's office upon the rolls as well as in the weekly abstracts. This should not only be done as a check upon the collectors who receive the fines, but should be entered upon the clearance for the purpose of acquainting other collectors upon the canal, that the captain or owners of the boat had been guilty of a fraud, and of course cause the officers upon the canals to exercise more vigilance in preventing a repetition of the offence; besides, it would operate as a check upon the owners and captain, as they would dislike the exposure.

The checks upon collectors should be so arranged that they should be required to put upon some clearance which will arrive at, or pass the next office to them, every cent they receive for both tolls and fines. Your committee do not wish to be understood as advancing this proposition, or any other, that they put forth in this report, for the reason that they suppose that the collectors of tolls have been dishonest; the examination has not been thorough enough to ascertain

that fact, if it exists, but with the facilities which have so long existed for being dishonest, it is very fortunate for the State if none of the collectors or none of their clerks have availed themselves of the opportunity; if they have not, it is not for the reason that strong temptations have not been held out to them in the manner in which the business has been transacted, but must be attributed to the state having been exceedingly fortunate in selecting none but honest men. But taking it for granted that no wilful frauds have been perpetrated, many errors have unquestionably happened, by which the treasury of the State is the sufferer. Indeed quite a number have been discovered by the slight examination which has taken place. In the entry of one single clearance, the state lost seventy five dollars by the collector placing it in the column of another collector's account, instead of that of his own. This, as well as many others of less amount, which has come to light in this examination, should have been detected by the collectors themselves, in the settlement of their cash accounts, at the close of each day's business.

Your committee are of opinion that a thorough examination should be had of all the accounts and papers relating to the collection of tolls, fines, and water rents, in the Auditor's office, from the commencement of the receipts up to this time.

The check rolls kept by collectors and returned to the State Auditor's office have never been compared, or examined in any way, which would lead to the detection of frauds or even mistakes. A collector may have issued a clearance and received upon it fifty dollars, or any other sum, and not account for one cent of it, and although being regularly charged to him by the next collector, no examination has been had, that would even detect such a fraud or error. This must appear remarkable to every person the least conversant with ordinary business transactions, and when applied to the large amount of collections upon our canals, it is much more astounding, but it is nevertheless true.

In cases of discrepancy between the accounts of the collectors receiving the money, and those who check them, a resort to the clearances is necessary in order to determine which is right; this renders it very important that all the clearances should be preserved, either in the collector's office where they terminate, or sent to the State Auditor's office. But this has not been sufficiently attended to. A very many of the clearances are missing; this renders an investigation somewhat difficult. Collectors should be held strictly accountable for the safe keeping and return to the Auditor's office, of all clearances. No boat should receive a new clearance until the old one is surrendered to the collector where it terminates.

There has also been great neglect and informality in the collection of, and accounting for water rents. Until quite recently it has been so managed that collectors could have kept (if they had thought proper to do so) one half of their collections, without much hazard of detection; and if they have done so, there is not evidence sufficient in the Auditor's office to detect it. This subject should also be thoroughly investigated.

All the checks and guards practicable, should be thrown around the collections and disbursements of the public moneys.

Much more could be usefully said upon the subject matter for which the committee was appointed, but they have not time to dwell further; and submit to the Senate, this crude and very hastily drawn report, without any special recommendation, and ask to be discharged.

JAMES MYERS,
H. G. BLAKE.

R E P O R T
OF THE
JOINT COMMITTEE APPOINTED TO INVITE GENERAL
TAYLOR TO VISIT THE CAPITAL.

The Joint Committee appointed to wait upon Gen. Zachary Taylor, President Elect of the United States, at Cincinnati, and communicate to him the joint resolution of this General Assembly, inviting him to visit the Capital of this State, ask leave to make a

R E P O R T :

In pursuance to said joint resolution, the committee on the 16th inst., waited upon General Taylor in Cincinnati, and through their chairman presented him a copy of said resolution, and accompanied the presentation of the same, with an earnest request that he would accept the invitation and accompany the committee to this capital.

The President elect replied, that his engagement at Washington City, and the condition of his health forbid him to depart from the most direct route to Washington, and that therefore he was constrained to decline the invitation to visit the capital of this State at this time.

Your committee will add, that on the 23d inst., they received from General Taylor a letter, a copy of which they attach to and make a part of this report.

All of which is respectfully submitted,

WM. DENNISON, Jr.,
JAS. H. EWING,
G. E. PUGH,
JAS. R. MORRIS,
L. GIDDINGS,
CHAUNCEY N. OLDS.

[COPY OF GENERAL TAYLOR'S LETTER.]

WHEELING, VA., February 20, 1849.

GENTLEMEN : I had the honor of receiving at Cincinnati through the hands of a member of your committee, a copy of the resolutions recently passed by the Legislature of Ohio, inviting me to visit the cap-

ital of their State as the guest of the commonwealth, on my way to Washington.

The distinguished source from which this gratifying invitation comes, and the desire which I have cherished for many years, of visiting the interior of your State, would have rendered it under ordinary circumstances particularly agreeable to me to accept the civility now proffered.

But I regret to inform you that my engagements already on hand, peremptorily forbid me from traveling so far out of the direct route as to visit your city. I beg however, that you will convey to your honorable body my warmest acknowledgments for this flattering mark of their consideration, and to assure them that I indulge in the hope of yet having an opportunity of offering them these acknowledgments in person.

I am, gentlemen, with great respect,

Your obedient servant,

Z. TAYLOR.

To Messrs. WM. DENNISON, JR., J. H. EWING, GEO. E. PUGH, LUTHER GIDDINGS, J. R. MORRIS and C. N. OLDS, *Com. Leg.*, &c.

REPORT

OF THE

SELECT COMMITTEE ON UNFINISHED BUSINESS OF THE LAST SESSION,

The Select Committee on the unfinished business of the last session, have performed the duty assigned them, and report the following as unfinished business, which was postponed from the last session, until the first Monday of December, A. D. 1848, to wit :

A bill for the regulation of Common Schools in the city of Cincinnati.

A bill to revive and put in force a part of a second section of "an act pointing out the mode of levying taxes," passed March 14, 1831—took effect March 1, 1832.

A bill to amend an act entitled "an act defining the powers of Justices of the Peace and Constables in civil cases," passed March 14, 1831.

A bill to protect the privileges of members of the General Assembly of the State of Ohio.

A bill to prevent the execution of leases having a longer time to run than ten years.

A bill to incorporate the "Horeb Hall Association" in Sandusky.

A bill to incorporate the city of Cincinnati, and to amend all acts heretofore passed on that subject.

A bill to prohibit the selling of spirituous, malt, vinous or intoxicating liquors in Steubenville township.

An act for the erection of the new county of Walhonding.

An act for the government of the Ohio Lunatic Asylum, and the care of Idiots and Insane.

An act to create a certain road district therein named.

An act to amend an act entitled "an act providing for the punishment of crimes," passed March 7, 1835.

An act to repeal the act entitled "an act to lay out and establish a free turnpike road from New Washington in Guernsey county to Newton in Tuscarawas county," passed Jan 14, 1847.

An act to lay out and establish a graded state road from New Franklin in Stark county, to Hanover in Columbiana county.

An act to authorize the Commissioners of Trumbull, Mahoning and Columbiana counties to settle their respective claims on the Poor Houses in Trumbull and Columbiana counties.

An act to amend an act entitled "an act to create a lien in favor of Mechanics and others in certain cases," passed March 11, 1843.

House Preamble and Joint Resolution relative to the boundary line between the States of Ohio and Virginia.

Memorial of the Directors of the Columbus and Sandusky turnpike company, relative to the Attorney General.

Sundry petitions praying that a law may be passed prohibiting the manufacture and sale of spirituous liquors.

The petition of R. R. Ranney and 108 other voters of Trumbull county, for authority to the Commissioners of Trumbull county to expend the two per cent fund arising from the surplus revenue to the erection of new county buildings in said county.

The petition of Clayton Herrington and other citizens of Trumbull and Mahoning counties praying for a limitation in the requisition of land in Ohio by each individual and for the exemption of a homestead not exceeding in either case 160 acres.

A petition from 150 citizens of Cincinnati, for an act providing that said city may transfer one hundred thousand dollars worth of stock that she now holds in the Little Miami Rail Road Company, and to subscribe the same amount in the Cincinnati, Hamilton and Dayton Rail Road Company.

Petition of citizens of Hamilton county in favor of an act allowing the County Commissioners to levy and collect taxes for erecting a bridge over Mill Creek at Ludlow.

Petition of Timothy Jaynes and 32 residents in School District No. 13, in Jefferson township, Fayette county, for the passage of a law authorizing the school directors of District No. 13, to sell and convey part of lot No. 19, in the town of Jeffersonville, to the Jeffersonville Free Church Association.

Memorial from the Bar of Hamilton county, praying for an increase of the salaries of the Judges of the State of Ohio.

SPECIAL REPORT
OF THE
SECRETARY OF STATE,
IN REPLY TO SENATE RESOLUTION RESPECTING PRINT-
ING PAPER.

SECRETARY OF STATE'S OFFICE, }
February 3d, 1849. }

To the Honorable the Senate of Ohio:

The following report is submitted in reply to a resolution of your honorable body, relative to paper procured for the State Printing.

The amount of paper obtained for the contract with Charles Scott, not yet delivered to him, and under my control, is 396 reams of Double Medium, and 106 reams of Super Royal. The amount of paper in his possession, as appears by his receipts on file, is 654 reams of Double Medium, and 515 reams of Super Royal; of this amount, 64 reams Double Medium and 29 reams Super Royal, constitute the remnant of paper furnished to him last year. The delivery of paper, for the session of 1847-8, commenced about the 15th of August, 1847; the delivery for the last year, begun August 3d, 1848. The arrangement by which the contractors were to deliver the paper to him directly, and after delivery to hand his receipts to me as vouchers, was made. The only considerations which produced that arrangement, were that of economy, convenience and the preservation of the paper. Mr. Scott has commodious store rooms in which the paper has been kept at a saving of \$50 annually. The inconvenience to this office and to himself which formerly existed, in carrying the paper in small quantities, is now avoided. The specially beneficial result, as it is conceived, arising from the plan, is that the paper is now safely and responsibly preserved. Formerly the paper was much damaged by being kept in rooms, which were the best that could be obtained, but were not suitable for the purpose. The inducements specified exclusively influenced my action in the matter.

Respectfully,

SAMUEL GALLOWAY,
Secretary of State.

REPORT

OF THE

STANDING COMMITTEE ON PRINTING

On the subject of the Special Report of the Secretary of State relative to the printing paper belonging to the State.

Mr. Speaker:—The standing committee on printing, to whom was referred the special report of the Secretary of State, relative to the printing paper belonging to the State, have had the same under consideration, and now

REPORT :

That in their opinion, the Secretary of State has assumed a very dangerous, unsafe, unjustifiable power over the manner of keeping and preserving the paper belonging to the State.

It appears by the report of the Secretary, that he has under his own control 396 reams of Medium, and 106 reams of Super Royal paper. But he has permitted near *twelve hundred* reams of paper, costing the State some four or five thousand dollars, to be delivered over to Charles Scott, having never had it in his own possession, but directed it to be placed in other hands, entirely beyond his supervision or control.

An excuse is set up, not very ingeniously, for this gross neglect of duty, that the person to whom this valuable amount of paper was entrusted, was a contractor for the public printing. But the Treasurer of State might, with the same propriety, direct the County Treasurers to deposit their money with the Judges of Courts, or other persons, who were to perform duties for the State ; and so every other officer transfer his own duties to others, until confusion would prevail in every department of public business. But, surely, no one so well acquainted with the history of public printing in Ohio, as is the Secretary of State, can seriously set up that contract as an excuse for such a course. That course, during the eight years that Col. Medary was State Printer, had never been adopted—the paper having always been kept in possession, and under control of the Secretary—and was delivered to the Printer only in small quantities, as needed for the progressing work. But in this case, the Secretary informs us that the contractor commenced delivering paper to Mr. Scott, as early as the 3d of August, near four months before it could have been needed for the public printing! The law makes it the duty of the Secretary

to deliver the paper to the Printer, "*from time to time as the same may be needed.*" Now, it must be evident to every impartial mind, that the law did not intend that the paper should be deposited for safe keeping with the printer—but he was to get it in small quantities, "*from time to time,*" as the printing progressed. Such had always been the practice by other Secretaries—and at the time said paper was delivered to Mr. Scott, *it was not needed!* Hence your committee are forced to the conclusion, that in delivering the paper to Mr. Scott, at the *time*, and in the *quantity* he did, the Secretary clearly violated the law under which he claims *any right* to deliver paper to the printer.

But the Secretary had no good reason for supposing that this Legislature would give the printing to Mr. Scott. He could not have forgotten that the Attorney General had given his official opinion that each branch of the General Assembly had exclusive control of its own printing. He could not have forgotten that his own party had, in each branch, exercised that control, in the face of an injunction from the Supreme Court; that a democratic majority in the Senate had exercised the same control, and that the Printer so employed had been recognized and paid by the proper authorities! In view of these facts, your committee, though unwilling to impute improper motives to a public officer, fear that a desire to aid a partizan friend, and forestall the action of the General Assembly, and thus compel this Legislature to give the printing to an individual who is not a legal contractor, and who has violated the contract under which he claims the public printing; influenced the Secretary in the departure from the long settled practice of his predecessors!

Your committee leave the whole subject in the hands of the Senate; it is for the legislature, or either branch, to take such steps as they may deem expedient for the protection of the public interests, and the dignity of the legislative body.

All which is respectfully submitted.

J. R. EMRIE,
A. G. DIMMOCK.

MINORITY REPORT

OF THE

STANDING COMMITTEE ON PRINTING, ON THE SUBJECT
OF THE SPECIAL REPORT OF THE SECRETARY
OF STATE RELATIVE TO PRINTING PAPER.

Mr. Blake, from a minority of the standing committee on printing, to which was referred the special report of the Secretary of State, relative to the printing paper belonging to the State, has had the same under consideration, and now

REPORTS :

That in the opinion of the committee, the Secretary of State has pursued a very *safe, justifiable and highly commendable course* in reference to the printing paper belonging to the State ; and has assumed no "dangerous, unsafe, unjustifiable," or "highly-censurable" power over the manner of keeping and preserving said paper, but has done just what any prudent man would, under the circumstances, do. The State having furnished no place for the safe keeping of this paper, the Secretary of State took the precaution of providing a place in the buildings belonging to Charles Scott, where it is under his control, and subject to his order. The proper vouchers have been given by Mr. Scott for said paper, and are now in the possession of the Secretary of State. No paper has been delivered to Charles Scott, but in accordance with his contract with the State, made in pursuance of law, passed March 12, 1845; the validity of said contract having been sanctioned by the official opinion of the Attorney General, your committee are of the opinion that the Secretary of State in delivering paper to said Scott as the same was needed, did but perform his duty, which is pointed out in said law and contract.

All of which is respectfully submitted.

H. G. BLAKE.

REPORT
OF THE
STANDING COMMITTEE ON PRINTING IN OBEDIENCE
TO SENATE RESOLUTION.

IN SENATE, *Jan. 12, 1849.*

The standing committee on public printing, in obedience to a resolution of the Senate in the following words, to wit:

Resolved, That the committee on printing, ascertain and report to the Senate whether the printed bills which have been laid upon the desks of Senators, were printed by the person with whom a contract has heretofore been entered into under the act of 1845, and the act amendatory thereto, and if not, by whom the said bills have been printed, and by virtue of what law, and further to report whether the paper upon which the said bills have been printed, belongs to the State, and if so, by whom purchased, and under what law the same was purchased,

Now respectfully report, that your committee are not aware of the existence of any law or any contract entered into previous to the commencement of the present session of the Legislature, binding upon this Senate as to its printing.

The printing is at present executed by Samuel Medary Esq., by virtue of an arrangement made with him by the Clerk, under the sanction of a majority of the committee on Public Printing; the prices to be paid for said printing not to exceed those paid for the printing for the year 1847-8.

The paper upon which the printing is executed, is furnished by Mr. Medary.

Respectfully submitted.

MINORITY REPORT

OF

SELECT COMMITTEE ON PRINTING, IN OBEDIENCE TO SENATE RESOLUTION.

IN SENATE, Jan. 12, 1849.

The minority of the standing committee to whom was referred the resolution on printing, in words following :

“Resolved, That the committee on printing, ascertain and report to the Senate whether the printed bills which have been laid upon the desks of Senators, were printed by the person with whom a contract has heretofore been entered into under the act of 1845, and the act amendatory thereto, and if not, by whom the said bills have been printed, and by virtue of what law, and further to report whether the paper upon which the said bills have been printed, belongs to the State, and if so, by whom purchased, and under what law the same was purchased,”

Has had the same under consideration and now reports: That the printed bills which have been laid upon the desks of Senators, were not printed by the person with whom a contract has heretofore been entered into, under the act of 1845, and acts amendatory thereto.

The printing mentioned in the said resolution, is done by Samuel Medary Esq., by virtue of an arrangement, (as is said by a majority of your committee) made with him by the Clerk of the Senate, under an authority from Messrs. Dimmock and Emrie, two of the members of the standing committee on printing; and further, the paper on which the said bills are printed, is purchased by said Medary under the same arrangement and authority.

The majority of your committee say, they are not aware of the existence of any law or any contract entered into previous to the commencement of the present session of the legislature, binding upon this Senate, as to its printing. The committee, however, indirectly admit there is such a law as suggested by the inquiry of the resolution, and that there are contracts entered into under it, but they assume the law

and the contracts made pursuant to its provisions, are a nullity.—From an opinion so fraught with injustice, and derogatory to the honor of the State, the subscriber is compelled to dissent.

In July, 1846, Jonathan Phillips, of this city, a competent and responsible contractor, contracted in writing, according to law, with the State of Ohio, to execute pursuant to the act of 12th March, 1845, and its supplements, the printing of bills of the two Houses of the General Assembly, together with such resolutions and other matters as the two houses, or either of them may order to be printed in the same form as bills, at 20 cts., per 1000 ems, for composition, and 20 cents per token for press work, for three years from 1st July, 1846.—It will be seen therefore, there is a subsisting contract for the same printing which the majority says is now done by Mr. Medary, under an arrangement with the Clerk of the Senate, (Mr. Knapp).

The subscriber believes said contract is valid, and disregarding it as the Clerk has done, is a flagrant violation of official duty, and if permitted by the Legislature, will involve the State in the odious light of broken faith.

It seems clear to the subscriber, Mr. Phillips is entitled to have the printing of bills, &c., according to the promise of the State, in her bond. He should have the work, or be compensated in damages for whatever loss he may sustain in consequence of the Clerk's employing Mr. Medary to do the printing mentioned in Mr. Phillips' contract.

What particular duty the Senate has to perform in relation to its own printing, other than the ordinary legislative duty, the subscriber is not aware. He believes the power and duty of the Senate to be legislative purely; and as all legislative power is vested in the General Assembly, the printing was properly provided for by law, for the two Houses. Neither branch of the Legislature can execute any legislative power alone, hence the clerk who is unknown to the constitution, can find no warrant for disregarding the duty of the State in employing Mr. Medary to do the printing, previously contracted to another, and the contract sanctioned by an act of the General Assembly.

It may be proper further to say that the Auditor of State, advanced in accordance with the provisions of the law, to Jonathan Phillips, the contractor, three hundred dollars, which will be a clear loss to the State, if the conduct of the majority of the committee and the Clerk, be tolerated. The majority of your committee has given no reason whatever for their opinion to rest upon, and it was well, perhaps, they attempted not to reason. The position they assume is not only without reason to support it, but is morally and legally incorrect. The system which is attempted to be revived, is that of plunder upon the people's treasury, and though the committee may specify rates and prices, ere long the treasury will be the prey of the speculator, and the people's money will inevitably again become a mass of political grab-bings. The law of 12th March, 1845, providing for the letting of the State printing to the lowest bidder, is not only fair and just to the citizen mechanics who wish to compete for State employment, but proper

In itself, as a measure of retrenchment so much needed in times of high taxes. It is within the purview of the constitution—a saving to the State, and provides for the faithful discharge of that part of the public service. The clerk, therefore, should have sent the bills &c., to Mr. Phillips, and saved the disgrace which broken faith necessarily brings with it.

All which is respectfully submitted.

H. G. BLAKE

R E P O R T

OF THE

SELECT COMMITTEE ON RESOLUTION AND PENDING AMENDMENTS RELATIVE TO PRINTING.

The undersigned, a member of the select committee, to whom was referred a resolution and pending amendment relative to public printing, have had the same under consideration, and now

REPORT :

That they have not had sufficient time to make a thorough investigation of the subject embraced in the amendment of the Senator from Highland ; but from what examination they have been able to bestow upon it, they are clearly of the opinion that a very erroneous and unjustifiable construction has been given to the law under which Mr. Scott claims to have executed the printing of the last session ; by which he has charged the State, and received from the public treasury, large sums of money to which he has no valid claim ; and your committee cannot recommend the adoption of this resolution, until a full, fair and impartial investigation shall be had into this matter, and the money thus illegally paid, refunded to the State Treasury.

The law creating the office of State Printer, was repealed, and the law now upon our statute book, enacted for the ostensible purpose of reforming abuses in the manner of charging for work done, as well to prescribe by positive and definite rules, the manner in which it should be executed. But strange to say, none or very few of these alledged abuses have been corrected, and others equally serious have been committed. The committee, it is true, are compelled to derive their information from the report of the committee on printing, made at the session of 1847-8—and the statement of Mr. Scott himself—not having time to examine the bills laid upon the tables of Senators, and compare them with the work. But under any circumstances, the law should have been more strictly construed than Mr. Scott seems to have done—and in this case, where the printing was forced from the hands of one printer, and given to another, for the purpose of retrenching the cost of the work, and providing for compactness of pages, the strictest construction should be placed upon all the provisions of the law. Notwithstanding this attempt at retrenchment, if the appropriation of fifteen thousand dollars to pay for the work executed last year, and the estimate by the Auditor that fifteen thousand dol-

lars more will be needed for the present year, is any criterion for judging, your committee must conclude that no great saving has been effected.

The law under which Mr. Scott performed his work for the State, in accordance with the intentions of its framers, provides that the printed matter shall be imposed in a close and compact form, without any unnecessary blanks or head lines. This was so carefully worded to show some pretence for the necessity of a change in the State Printer Law. But under whatever pretext the law was framed, or however absurd it may be, there can be no excuse for a departure from the plain letter of its provisions. But, upon examination, your committee find page after page, on which the "blanks" are unnecessarily large, and in the aggregate, the items of additional expense will not be inconsiderable. For it is not only the composition that is increased in amount paid for, but in press work and paper! In some instances the pages are unnecessarily open, great care appearing to have been taken to gain a few lines here and a few there, in order to run over some half dozen lines, to the top of an extra page, and secure pay for what is called "*fat matter*."

Your committee have not time to specify all the particulars in which Mr. Scott seems to have exceeded the provisions of the law, or the intention of its framers, in the manner of executing the work and charging therefor. Suffice to say—that without intending to charge the printer with an intentional violation of his contract, it appears clearly evident to your committee that gross injustice has been done to the State—and that whether the Senate will take any further steps to ascertain to what extent these over charges have been carried, or not, the resolution under consideration should be so amended as to define in the clearest possible manner how the work should be executed, and what the prices shall be—and not leave so important a matter as this has grown to be, to the prejudiced or partizan construction of printers, not parties to the transactions. The law was enacted expressly to meet all these opportunities for forced constructions of printers' rules, and implied provisions of law; and no candid Senator will permit loose and undefined items of charges to be allowed and paid for.

The undersigned is free to confess that under usual or ordinary circumstances, he would not insist upon a strict technical construction of the law; and many unnecessary blanks, &c., might be overlooked by liberal minded men. But it should be remembered that at the time of the passage of this law, and when Col. Medary was executing the public printing, the present State Printer was the proprietor and publisher of a public newspaper, of opposite politics to Col. Medary, and entered fully into the bitter and relentless crusade, then urged against that officer, and which had been kept up for several years previous. And if that present printer was sincere then, how careful should he be to prove it by practical demonstration, after he had got the advantage of his rival, and forced from him the work which the State had solemnly contracted with him to perform. And the committee desire no better evidence of the gross injustice of that act, than

the present appearance of the laws, journals and documents printed by Mr. Scott.

Your committee have compared the volume of laws as executed by Mr. Scott, with a volume printed under the old law, and they are astonished that, under the circumstances, or even in any contingency, the blank spaces between the laws, should have been left as they are. Instead of being *less* than the same blanks in the laws printed by Medary, they are in most cases, *greater*, and never less; but as compared with the laws printed by Col. Olmsted, or Mr. Dolbee, the blank spaces are large and glaringly unjust. And when we remember that the words "shall be printed in close *compact* order, without unnecessary blanks or open spaces," were introduced into the new law to prevent the printing from being as *open* as Medary performed it; the illegality and injustice of the course pursued by Mr. Scott, is too glaring to escape condemnation! Now, if Senators will take the trouble to examine the volume of Chase's Statutes, a law work neatly executed in a workmanlike manner, and which may be found in almost every lawyer's library, or the laws of Massachusetts and Virginia, and compare the "open spaces" or blanks between the laws in those volumes, and those in the volumes printed by Mr. Scott, the mind will at once comprehend the meaning of the words in the law regulating printing, and perceive the gross departure from that law by the present printer! It is impossible in the short time allowed for investigation to compute the amount of excess which Mr. Scott has received—but as this abuse runs through all the laws, journals, reports and other matter it cannot be small—and when added to the amount over charged for rule and figure work, where figure work alone is chargeable, the amount must reach hundreds of dollars.

Another objection to this resolution is, that it indirectly affirms, (though professing on its face not to do so) the alledged *contract* with Messrs. Scott and Phillips, a thing which your committee can never consent to do. Each branch of this legislature is independent of the other, so far as the election of its own officers, and the procuring of all things needful for the convenient transaction of its business, is concerned. Hence it can procure the printing of its own bills, journals and documents, where, and by whom it chooses. And, as in the view of your committee, one legislature cannot bind its successor, neither can the action of one branch bind the other; and the contractors for public printing knew, when they executed that contract, that its provisions were only binding upon the members of the body with whom they contracted, and that their own party friends had set the example of changing their public printers whenever they deemed proper. Hence they cannot claim damages at our hands by virtue of their contract, though, in most cases of the kind, *equity* and good faith might dictate the payment of damages, amounting nearly to the acknowledged profits on the work. But Charles Scott is not the contractor under the law; for that law expressly provides that the work shall be given to the lowest bidder; and Mr. Scott was not a bidder, either highest or lowest, in no way whatever, and therefore no contract made with him is binding on the State. The lowest bidder was

Judge Thrall, soon after to become the editor of a partizan press, and the mouth-piece of the very party that enacted the law. To prevent bad appearances, or from some more laudable purpose unknown to your committee, the *contract* was made with Charles Scott, as *assignee* of Judge Thrall. But the latter had nothing to assign—he had obtained no right to the work by the mere *bid*—his rights commenced with the perfection of the contract by bond and security, which he has never given ; hence Charles Scott could not legally perform the work under the bid of Thrall, or become contractor in his stead; and, therefore, has no rights to be protected or injured by this resolution.—The whole transaction seems to have been a *farce*, beneath the dignity of this Senate to recognize as a contract!

Your committee beg leave to urge another reason why Charles Scott should not be employed to do the printing of this Senate. It is the duty of this government to protect the interests of every branch of labor, against the encroachments of capital, and especially is it their duty so to do, in relation to all work immediately ordered to be performed by the legislature. Now, it was urged when the present law was enacted, that it would cause a great reduction in prices, and materially lessen the expense to the State. True, the prices paid for composition and press work, are reduced, but the aggregate cost of the work has not been reduced in proportion. Now, from whom does this reduction in composition come? Certainly, not from the pockets of the contractor, but from the pockets of the poor compositors! The prices paid by Col. Medary, averaged nine dollars per week, and he is now paying the same price. But since Mr. Scott has been doing this work, it is confidently asserted to your committee, that *seven dollars* per week is all that the Printer to the State, can find it in his heart to pay his laborers! Here, then, is a weekly tax of two dollars per week, filched from the hard earnings of the most industrious and useful class of mechanics in your State, in order to replenish the State Treasury, and reduce the State debt! Your committee beg pardon for this digression, but it is too glaring an act of injustice to pass unnoticed, and it is earnestly urged as a reason why this resolution should not pass. Because the work can be as well done, and as speedily, by other master mechanics, who are paying their journeymen living wages. Messrs. Hamlin and Garrard, are paying five cents per 1000 ems, more than is paid by Mr. Scott; and by employing them, some 20 or 25 honest laborers, and their families, will be benefitted by your action.

In conclusion, your committee most earnestly protest against either of the persons named in the resolution, being longer employed as public printers. They were parties to the violation of the contract with the late State Printer—were active and persevering advocates of the passage of the present law; and the dignity of the Senate and the interests of the State, would be protected by employing other and disinterested persons to do the work. It has been urged that the work if executed by Garrard and Hamlin, would be printed on Medary's press—granted. But is not the work now, printed on the same press with the State Journal? The fact is, there are but two steam presses in the

city upon which the work can be printed ; and it matters little upon which press the work is printed, so that it is fairly and justly put in type, according to the provisions of the law. The press work alone is not complained of, in any case—the manner of making up the pages, increases or diminishes the amount of press work. Another objection has been made, that there will be a loss of *paper*, if persons other than Scott and Phillips be employed. Such will not be the case—the paper is contracted for under a law entirely disconnected with the law regulating printing, and the present printers have no authority to obtain the paper until the work, or the copy, is placed in their hands. And your committee feel well assured that the money already advanced cannot be lost to the State, in any contingency, and hope such considerations will not influence the action of the Senate, on this question.

But if the Senate should insist upon the adoption of the resolution, then your committee recommend the adoption of the following amendments, in order that it may be made as perfect as possible.

First—Strike out the words “shall deliver the orders of the Senate for printing to”—and insert

“Is hereby directed to contract for printing ordered by the Senate, with,” &c.

Second—After the words, “up to this day,” insert “or in progress.”

All which is respectfully submitted.

A. G. DIMMOCK.

REPORT
OF THE
SELECT COMMITTEE ON HOUSE BILL NO. 118.

—
IN SENATE—March 7, 1849.
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The select committee to which was referred House bill No. 118, "further to amend an act entitled an act to establish a Commercial Hospital and Lunatic Asylum for the State of Ohio, passed January 22, 1821," had the same under consideration and now

R E P O R T :

That although the majority of the committee on Medical Colleges and Societies are quite liberal in charging the friends of this bill with a resort to means calculated to mislead the members of this body, and to conceal the truth for the purpose of "making the worse appear the better case," yet your committee will not attempt to vindicate the friends of the bill against charges thus gratuitously made. There is not only no evidence of a resort to such means by the friends of the bill, but a comparison of the *language* of their petitions, with that used by the remonstrants, might be some proof who was anxious to "make the worse appear the better cause." While the former presents the matter to the public and the General Assembly, *clearly* and with a full *explanation* of the objects of the bill, the latter leaves all in doubt, and cultivates the idea that "all the professors and students are to be admitted into the same wards of the Hospital at the same time, to manage and control the patients in the same wards in utter confusion ; and that the trustees of the township, are to be ejected out of the Hospital." All this is mere surmise ; neither the bill itself, nor anything which its friends have done or intend to do, will for a moment warrant such a conclusion. It is said by the majority, that to allow the patients to choose their own physicians would lead to the worst of consequences. Your committee cannot come to that conclusion, and if it were allowed an opinion on the subject, would express the very opposite. Within the proper limits and under proper regulations, such as may be made, and such as the bill contemplates, the most beneficial results must follow. Much is said by the majority, and very justly, of the importance of peace and quiet of mind to the sick, and in connection with this subject, the committee affirm the importance if not the absolute necessity of the languishing patient's faith in his medical attendants. Why not, then, give the unfortunate the

opportunity of aiding in his own cure by the exercise of that faith in an attendant of his own choice? If he cannot have that choice when he desires it, but is obliged to submit to a course of treatment which he distrusts, and in which he has not full confidence, all must acknowledge that his chances for a speedy recovery must be greatly diminished. So powerful an effect does the "faith in the doctor of one's own choice" produce on the disease, that some very learned physicians of the old school are in the habit of attributing many if not all the recoveries that take place under Homœopathic treatment, to faith in the physician.

But to allow the inmates of the Hospital, on entering the same, to make choice of a physician is said to be almost entirely impracticable. Your committee is not prepared to say how far such a principle is practicable; but believe it will be prudent to give such privileges, and experience, under the direction of humanity, will prove how far the same is practicable, and to that extent your committee go—the bill goes no farther. The bill contemplates a classification of the patients as they enter, between the different departments, unless the patient expresses a decided preference for some one department over another, in which case the wish of the patient shall be complied with as far as practicable. This is the language of the bill, and is so clear that none can misunderstand it. No one is to be catechised as to his choice, but all are left free to choose his medical attendant or not, as he pleases. While each department is to be equally and fairly dealt by in respect to patients, none will be admitted to either department, except in *regular alternate order*, unless a preference is expressed by the patient, as before stated.

If a difficult, novel, complicated or obscure case of disease occurs, and the attending physicians are not satisfied about it, certainly if it be the patient's wish, the medical attendant ought to have the right to call in any physician to his aid, whether he belong to either of the attending faculties, or is unconnected with the Hospital. The bill provides for this contingency, by allowing the physicians to call counsel, since no one is so wise but that some other one may know things beneficial on such occasions; and it might happen that a physician in the city could render aid on particular occasions, better than any one else, even though he was not a professor in either college.

It is said by the majority that no motive of monopoly induced the State to establish this Hospital. But it is also stated that "it was not intended for a school of *clinical instruction*." This your committee conceives to be an error, no doubt unintentional, but the eighth section of the act founding the Hospital, provides that the faculty "may prescribe regulations," and under such regulations, "introduce the pupils of the Medical College of Ohio into said Hospital, to witness the treatment of patients there assembled." The faculty has, by regulations, constituted a school for clinical instruction, and given clinical lectures in a lecture room in the Hospital, accordingly. The fact was apparent to the Legislature then, as it would be now, that such institutions were connected with Medical Colleges both in Europe and America, and that to enable the young men preparing themselves for

the very high and responsible duties pertaining to the practice of medicine, and to qualify them as fully as they ought to be, it was all-important that such an institution should be established in such a situation as that the *medical students of Ohio* could have the benefits of clinical instruction without being dependent for that instruction upon the eastern schools. The General Assembly, acting under these views, as well as for the other benevolent purpose of providing a home and a resting place for the sick and the afflicted, established the Commercial Hospital at Cincinnati. It was as well a school of clinical instruction as an alms house ; nor does your committee agree with the majority that it is detracting from the benevolent intention of the Legislature, or the people of Ohio, to suppose that while they established an institution for the benefit of the poor and the distressed, they at the same time established in that institution such a regulation as will enable those to whose skill and practice the people will submit, to be well qualified to practice with honor and success to themselves and the medical profession, and safety to those who shall fall under their charge. It is said by the majority that it was made the "*duty*" of the faculty of the Medical College of Ohio to attend the Hospital. It is true, the term "*duty*" is used in the law, but the term *privilege* would have expressed the idea much more distinctly. The law confers the *privilege* on the faculty to attend the Hospital, and for its prescriptions for the patients, under its own regulations, admits its students for clinical instruction ; but it was not intended to be an exclusive privilege forever. The State of Ohio has given that faculty the use of more than *forty thousand dollars* of the public funds, upwards of twenty years ago, to build up a college and furnish it, and has given the faculty the *privilege* (or made it their *duty*, if you please,) to lecture and receive the income, without rendering any return to the State, except in instruction to medical students, and prescriptions for the sick. It is said the faculty has performed these services "*without fee.*" Is not the attraction for students to their college, presented in their clinical advantages, an ample compensation ? If not, why not now relinquish a share to other hands, and be discharged in part from these onerous duties imposed ? Why labor so vigilantly to shut out others from the privileges so necessary to the public welfare ?

The majority ask, "Will the bill destroy the monopoly ?" and then affirm that "three schools may monopolize as well as one." It will be recollected that these three schools embrace the two great classes of medical men—the *old school* and the *reformers*. The eclectic school is not bound to any of the exclusive systems of the past—is liberal and enlarged in its views—condemns none for opinion's sake ; and while it embraces a large portion of the practice and teachings of the old school, it is not opposed or indifferent to the improvements which have been made by those not directly in its own ranks. The reformers treat all knowledge and improvement with respect, and venerate true science wherever found. They do not deem opinions necessarily erroneous because such opinions are new. Having an equal knowledge of the old school practice with its friends, and studying all their writings, teachings and scientific disquisitions, the reform school has

the advantage of a thorough knowledge of the practice of both.— This being the character of the reformers, no monopoly can exist, as all will be free to attend their teachings, witness their practice, and receive their instructions. The arrangement proposed by this bill will not only confer the greatest good on the greatest number, but the benefits will extend equally to all, and there will be no “privileged few,” to the exclusion of the many.

It is charged by the majority, that the argument used by the friends of this bill would (if successful) throw open the doors of all the benevolent institutions of the State. Your committee cannot view the matter in that light. No analogy whatever exists between the Commercial Hospital and the Asylums located in this city. But it is believed no good reason can be assigned why the General Assembly might not confer on the faculty of the *Starling Medical College* the privilege to visit those asylums, with their students in proper numbers, and under proper regulations, and consult with the superintendents respecting the inmates. That medical and surgical clinics might be furnished from these institutions without the slightest detriment to the invalid and sick, and to the great benefit of medical science and medical students, your committee does not doubt. Especially so, since clinical lectures are not necessarily given in the bed rooms of the sick, but may be given with equal advantage in apartments beyond the hearing and disturbance of the languishing patient, from notes quietly taken by the attending physician at the bedside.

It is further said by the majority, that the Commercial Hospital is not a State institution because it depends for its support on the taxpayers of Cincinnati. In reply, your committee beg leave to introduce a statement of the finances of the Hospital as reported by the trustees of Cincinnati township in their last financial report, dated 6th March, 1848. This report shows most clearly that, instead of the Hospital being a source of expense to the township, it has yielded a handsome income. The Hospital not only supports itself, but pays several thousand dollars towards supporting the paupers of that township. The items relative to the Hospital, in the account, stand thus :

Receipts of Hospital.

Amount received from auction duties and licenses.....	\$4,381 67
“ “ Hamilton Co. for keeping lunatics,	4,859 87
“ “ Cuyahogo Co do do ----	464 00
“ “ Millcreek tp. for keeping paupers,	226 00
“ “ Darke Co. for keeping lunatics...	124 00
“ “ Greene tp. for keeping paupers...	61 42
“ “ Colerain tp. for do ----	45 28
“ “ Sycamore tp. for do ----	6 46
“ “ Springfield tp. for do ----	32 56
“ “ Miami and Clermont counties for keeping paupers.....	58 28

Amount received from U. S. Surveyor of the port for	
Cincinnati, for keeping boatmen,	1,025 50
" " Sundry persons in the Hospital--	2,184 77
Amount due from Hamilton county for keeping lunatics -	1,306 25
Amount due from Millcreek, Colerain, Fulton, Miami and	
Union townships-----	734 54
And from sundry persons for keeping lunatics in Hospital,	1,108 86
	<hr/>
	\$16,619 46
Amount of <i>taxes</i> to meet expense-----	6,983 97
	<hr/>
	<u>\$23,603 43</u>

Expenditures.

Amount paid for support of Hospital-----	\$16,271 39
" " Fuel used in Hospital-----	2,121 22
" " Steward, nurses, cell-keepers and others	
in the Hospital-----	3,481 27
" " Interments, including coffins, &c.-----	1,749 55
	<hr/>
	<u>\$23,603 43</u>

From these certified statistics, it will be seen that Cincinnati township raised by tax, \$6,983 97, a sum not by any means sufficient to support the paupers of the township, if they were supported elsewhere than in the Hospital. By the annual report of the trustees of the township, for the year ending 1st January, 1849, it appears that there was in the Hospital 203 resident township paupers at that time; and it further appears from the report of the township trustees of 1st January, 1848, there were in the Hospital, 125 resident township paupers. The average for those two years is 164 resident township paupers to be supported by the Hospital. By the law, the Hospital is allowed to charge \$2 per week for keeping strangers. Now if we charge the township \$1 25 per week only, which is very cheap, for keeping these 164 paupers, it would amount to \$10,660. This amount the township now pays, under the regulations of the Hospital, with \$6,983 97 in taxes. Thus it will be seen that the township is the gainer by the operation of the Hospital system, of a sum of \$3,676 03.

How do these facts compare with the statement made by the majority, that "eleven thousand dollars are now raised by the township of Cincinnati, to pay the deficit of the Hospital expenses." It is true the trustees of the township report that they have expended \$14,789 18, for the relief of out door poor, and it is probable they wish to add that sum to the Hospital expense, and this may account for the \$11,000 00 certificate referred to by the majority.

It is further stated by the majority, that the affairs of the township of Cincinnati, are so interwoven with the Hospital affairs, as to ren-

der it impossible to separate them. The thousands who have petitioned the General Assembly, by their earnest petitions affirm to your committee, that the fact is otherwise. The bill provides for the appointment of a board of managers, who shall arrange matters for attending the sick, as well as the insane. Certainly, this board will do nothing to jeopardise the comfort or the lives of the inmates. We cannot in advance pronounce them destitute of benevolent feelings, and other qualities necessary to the carrying out in a proper manner, the provisions of the bill. The bill, as your committee understand it, does not propose to interfere in any manner, with the *rights, privileges or duties* of the township trustees. It leaves them and their authority just where it finds them. The bill only effects the medical management of the Hospital, which never was in any manner subject to the control of the township trustees. The original law precluded them expressly from controlling it, except so far as the appointment of stewards, nurses, and servants were necessary. That law did not give them the power to appoint an "*apothecary or house surgeon*," or to direct in any manner, with reference to clinical lectures. The bill only substitutes the three faculties for one, and the board of managers, are only for the medical and surgical management of the Hospital. They are to do for the several faculties just what the faculty of the medical college of Ohio, done for itself, independently of the trustees of the township. No change in the mode of providing for the management of paupers, is contemplated, nor in the manner of providing for the sick.

But the majority say the matter has not been publicly discussed, and that petitions, no matter how numerous, ought not to be regarded. From each of these propositions, your committee respectfully dissent. This controversy commenced in 1845, as may be seen in the public documents of the state of that year. Petitions were sent into the General Assembly by the friends of the principles of this bill, while the trustees of Cincinnati township sent in their remonstrances. During the last summer, and the previous winter, the substance of the bill was made the subject of public lectures, before numerous meetings in the city of Cincinnati. Daily papers to the number of many thousand, circulated among the people, discussions and notices of the increasing interest of the controversy. To show a specimen of the publications above referred to, your committee propose to introduce an article from the "*Daily Times*," a paper read by thousands in and around the city. The article is as follows :

From the Cincinnati Daily Times, May 22, 1848.

IMPORTANT DECISION—OUR MEDICAL COLLEGES AND HOSPITALS.

An important case was decided by the Supreme Court on Saturday, (Judges Hitchcock and Reed upon the bench,) involving the rights of Medical Students and Colleges, in reference to the Cincinnati Commercial Hospital, and also the rights of the public to certain revenues for benevolent purposes.

It appears, that by an act of the Ohio Legislature, passed in 1839,

the trustees of the township were authorized to admit the Medical Faculty of the Cincinnati College to the Commercial Hospital, and also by a proviso of the same act, all Medical Students in the State attending other Medical Colleges were authorized to enter the Hospital upon an equal footing, for the purpose of witnessing the Medical and Surgical illustrations presented before the class by the professor for their instruction. Under this law, the trustees having a discretionary power, have not thought proper to admit any other Faculty than that of the Ohio Medical College, to participation in the supervision of the Hospital. That clause, however, which entitles Medical Students generally to an equal admission, does not give to the board any discretionary power, but says "that the Students of the several Medical Schools or Colleges in the State of Ohio, shall be admitted into the Commercial Hospital and Lunatic Asylum of Ohio, in said township, to witness the treatment of diseases and such surgical operations as may be performed therein, *on equal terms* ; provided, further, that all medical Colleges which may avail themselves of the right of introducing pupils into the Hospital, shall agree to educate one youth from each judicial district in this state, free of expense, in the same manner that the Medical College of Ohio is bound to do."

Under this law, the Students of the Eclectic Medical Institute claim the right of admission to the Hospital upon the same terms as to fees, &c., as the Students of the Old School. The Institute has been in prosperous operation for three years—has taken a leading rank in the city ; and has fully complied with the law, by announcing in all its circulars, the opportunity of gratuitous education which it has offered, and which has been accepted by quite a number of young men.

This claim, however, has been rejected by the Medical College of Ohio, on the ground that it was designated by the Legislature to give the Faculty and Students of that School an exclusive monopoly of the advantages of the Hospital, and that the law extending its advantages to the Students of other schools being in the form of a proviso, must be considered entirely contingent, depending for its effect upon the entrance of the Faculty of the Cincinnati College as Hospital physician, and, consequently, is entirely null at present, as that Faculty is not now in existence.

This position was sustained by the decision of the Court, delivered by Judge Hitchcock, thereby confirming the monopoly of the Old School. We do not pretend to decide this point of law, but in order to present the matter fairly, we annex the statute which has been thus construed, that our readers may form their own opinions. It will be perceived by the latter portion of the act, that the public welfare is materially injured by this decision. The funds arising from the sale of tickets to the students, whom the Old School excludes, are to be applied to benevolent purposes, or to the support of the Hospital. The money is now lost to the cause of humanity by the exclusiveness of the Old School. The number of students attending the winter and spring sessions of the Eclectic Medical Institute, amounts to about two hundred and twenty—the Hospital ticket being five dollars, we

perceive that if each of these students took the ticket, the sum would amount to eleven hundred dollars for the past twelve months ; and according to all reasonable calculations of the increase of the school, might soon amount to two or three thousand dollars per annum, without including other medical schools in the calculation, which would furnish a considerable addition to the aggregate amount. We would simply ask, is it right that the public should be deprived of this large revenue for charitable purposes, merely to gratify the exclusiveness of the old Medical College, and assist in displaying its hostility against a successful rival institution ?

AN ACT in relation to the Medical and Surgical supervision of Commercial Hospital and Lunatic Asylum of Ohio.

SEC. 1. *Be it enacted, &c.,* That the Trustees of the township of Cincinnati are hereby authorized, in their discretion, and whenever they may consider it advisable, to admit the Faculty of the Cincinnati College to an equal participation with the Faculty of the Medical College of Ohio in the medical and surgical supervision of the Commercial Hospital and Lunatic Asylum of Ohio, under such regulations as they may prescribe ; *Provided,* That the students of the several medical schools or colleges within the State of Ohio, shall be admitted into the Commercial Hospital and Lunatic Asylum in said township, to witness the treatment of diseases, and such surgical operations as may be performed therein : *Provided, further,* That all medical colleges which may avail themselves of the right of introducing pupils into the Hospital, shall agree to educate one youth from each judicial district in this State, free of expense, in the same manner that the Medical College of Ohio is bound to do : *Provided, also,* That all the funds arising from the sale of Hospital tickets to students of the Medical College of Ohio shall be applied in the same manner as said funds are now applied ; all funds arising from this sale of tickets to students, other than those attending the Medical College of Ohio, shall be applied by said trustees to the support of said hospital, or in aid of any charitable object or institution within said township, as the trustees may deem proper, and it shall be the duty of said trustees to make to the General Assembly an annual report of the manner in which they have provided medical and surgical attendance on said hospital and asylum, together with a statement of the number of cases treated therein, the name of the disease, and the termination of the same.

SEC. 2. Any future Legislature may alter, amend, or repeal this Act.

The majority inquire, "where is the necessity for this change?" This interrogatory comes to the gist of the controversy, and your committee will proceed to give several reasons why the change should be made. The first reason, and one of the greatest importance is, that the change is necessary to the welfare of the unfortunate victims of disease, themselves. All other reasons sink into utter insignificance when compared with this. By the contemplated change, they

will have the benefit of the skill and talents of the most distinguished physicians of the rival schools. A desire to present a record of the most successful practice, will stimulate the faculties to extraordinary efforts, and in every department of medical practice at the Hospital, the sick and the insane will derive a superior benefit. At present the sick have no more than the ordinary attention, incident to undisturbed security, and an incidental reward, to their medical attendants. By the change they will have three house physicians to attend them constantly; each stimulated by a laudable ambition to serve and to relieve, each being obliged to keep a record, and open that record, to the inspection of a rival in his profession. The utmost vigilance, care, kindness, and proper treatment of the patients, may be certainly anticipated from the result.

Who cannot see that under such an administration, though no one faculty may have the same opportunities for giving clinical instructions, as has the present faculty, yet it will be infinitely to the advantage of the sick; not only so, but the community at large would be greatly benefitted by the regular monthly and quarterly reports to be made from journals kept by each department. From such statistical minuteness, a very correct estimate can be made of the relative merits of the rival schools, and the relative value of their plans of treatment. Is there no reason to believe there might be a change for the better, by exciting physicians to extra exertions and watchfulness, if even there be no differences in skill? Has the success in that Hospital been such as to recommend it to the confidence of the public? Has not the confidence of the State been misplaced? By the last annual report of the Hospital, dated January 1st, 1849, the whole number admitted, are reported as patients, in the Hospital. That number is 2581, of whom 306 died. But there is a gross inaccuracy in the Hospital report, which has led the majority into the same error. That inaccuracy consists in adding the resident township paupers to the list of patients.—For if the footings of the columns in the table of diseases, mentioned in the report, and headed “admitted,” be put together, they show all the cases of diseases treated during the year, to have been only 1712, instead of 2581, as stated by the majority. The remaining 869 being *paupers in the poor-house* department, and not patients. This correction shows a fatality of about 20 per cent., or, that about one out of every five of the patients, died. There were 1712 cases treated (exclusive of small-pox) and of these 288 died, being an average of one death to every 5, 94-100, cases treated. The most unsuccessful year for the Baltimore Hospital (except in cholera seasons) shows 2429 cases treated and 286 deaths, being one death to every 8½ cases treated. In regard to the Baltimore Hospital, the attending physician occupies in his report, three or four closely printed pages, in excuses and apologies for such extraordinary fatality that year. In 1834 (a cholera season) the number of patients admitted into one of the New York Hospitals was 1721, and the number of deaths were 174, the fatality as shown by the report of the Hospital, is about one-tenth of the whole number treated. The number of patients admitted to the *Chelsea Marine Hospital, Mass.*, for a series of years, was 9170, and the number

of deaths, for the same time, were 533, being an average of one death to every 17 cases treated. The whole number of patients admitted to the Commercial Hospital at Cincinnati, (exclusive of small-pox) in eight years, ending January 1, 1849, was 9498, of whom 1251 died, an average of one death to every 7, 59-100 cases treated. The account stands thus :

Chelsea, 9170 cases treated, 533 deaths—1 to 17.

Commercial Hospital, Cincinnati, 9498 cases treated, 1251 deaths—1 to 7½.

Or, if the worst years are compared, the exhibit will be as follows :

New York Hospital, cases treated 1721, deaths 174, or 1 to 10:

Commercial Hospital at Cincinnati, cases treated 1712, deaths 288, or 1 to 5, 94-100.

Baltimore Hospital, cases treated 2429, deaths 286, or 1 to 8½.

The whole number of cases treated in all the Hospitals of France in 1835, was 597,302, and the whole number of deaths were 45,303, or 1 death to 13.

In the Hospitals of Paris, in 1840, the whole number of cases treated was 83,644, of which 7,089 died, or 1 to 11 4-5.

Your committee have selected from the report of the Commercial Hospital a number of forms of disease, and the reported deaths caused by those diseases, for the purpose indicated below :

	<i>Cases treated.</i>	<i>Deaths.</i>
Typhoid Fever	45	20
Typhus "	76	21
Chronic Diarrhoea.....	82	20
Jaundice.....	15	3
Ulceration of the Bowels.....	61	58
Acute Diarrhoea.....	44	4
Typhoid Pneumonia.....	13	5
Gastritis	11	3
	<hr/> 347	<hr/> 134

Average one death to every two and an half cases treated.

Believing the proportion of deaths to the whole number of patients treated in the Hospital, in the forms of disease above specified, to be unusually great, your committee addressed, to a number of the physicians of this city, a letter in the following form :

“ SENATE CHAMBER,
COLUMBUS, March 2, 1849.

_____, M. D.

Sir : Being desirous to report intelligently on the bill relating to the Commercial Hospital at Cincinnati, as a select committee on that subject, and lacking the facts necessary to enable me so to report,

23—APP B. J.

I have take the liberty of inquiring respectfully of you, at what proportion to the whole number of patients treated in your practice, does mortality occur in the following forms of disease :

Typhoid Fever, Typhus Fever, Chronic Diarrhoea, Jaundice, Ulceration of the Bowels, Acute Diarrhoea, Typhoid Pneumonia, Gastritis.

I find, dear sir, by examining the statistics of the Commercial Hospital at Cincinnati, the mortality is stated at about one-fifth of the whole number treated, and in the above specified cases the fatal results are much greater. Please answer this line at an early day, in which you will have the goodness to say, whether or not I am at liberty to use your answer publicly.

Yours truly,

JOHN F. BEAVER.

DR. CASE IN REPLY.

COLUMBUS, March 6, 1849.

JOHN F. BEAVER, ESQ.

Sir: In reply to yours of the 2d inst., I would say that judging from what data I have, mortality occurs in following proportions in my practice in the diseases you specify. In Typhoid Fever, 1 in 15; Chronic Diarrhoea, 1 in 30; Uncomplicated Jaundice, none fatal; Ulceration of the Bowels, 1 in 20; Acute Diarrhoea, not more than 1 in 50; Typhoid Pneumonia, 3 cases, none fatal; Gastritis, about 1 in 15. You can use this publicly if you wish.

D. CASE.

Your committee have received other answers, some verbal and some written, which so nearly coincide with the above, that it is deemed unnecessary to insert them at length. Upon the whole, the result of the practice in this city, would indicate the mortality to be about one in every thirty cases treated of the forms of diseases above specified.—Your committee is further informed, from the most reliable sources, that the fatality in Hospital practice is necessarily greater than in private. But the difference being so very great, in the same forms of diseases, it would seem to your committee, radical deficiencies must exist in the treatment of patients at the Commercial Hospital, which call for a salutary change.

It may be supposed, the extraordinary fatality of the cases in the Commercial Hospital will be, in some measure, attributed to the fact that a large portion of the inmates were boatmen from the river, affected with the dangerous diseases incident to the southern climate to which they are exposed. When we look at the report, however, we find of that class 347 admitted, of whom only 22 died, or about 1 in 16. The mortality among the resident township paupers seems, on the contrary, to be much greater. Of 589 township paupers, who were necessarily residents of Cincinnati, the report shows that sixty

died, and your committee is not aware that the city of Cincinnati is more unhealthy than other large cities ; but on the contrary it has the reputation of being one of the most healthy in our land.

As it is more than probable, that scourge of humanity—the *Cholera*, will visit our country this year, your committee thinks it proper to give some statistics relative to the successful treatment of that disease, by the rival schools. When it made its appearance among us several years ago, the deaths appear to have been from one-third to one-half of all the cases treated by the old school physicians. Nine cases of cholera were treated at the Commercial Hospital during the present year, of which five died, showing that no improvement has been made in treating that disease at the Hospital, as its mortality is about the same as when it visited our country before. Your committee has been furnished with statistics of the treatment of cholera, by both Homœopathic and Allopathic Professors, in their respective Hospitals, and it is thought proper to introduce briefly their reports. In a medical work entitled “A Concise View of Homœopathy,” published in Dublin in 1845, will be found statistics as follows :

The average proportion of deaths in Paris, from cholera, treated under the Allopathic practice, was 49 per cent., while that, under the Homœopathic was only $7\frac{1}{4}$ per cent. In Vienna, (Aus.,) under the former, the deaths are reported at 31 per cent., while under the latter it was only 8 per cent. In Bourdeaux, death occurred under Allopathic treatment at the rate of 67 per cent., and under Homœopathic 17 per cent. only. The general average in the places mentioned will stand thus: Allopathic 49 per cent., Homœopathic $10\frac{1}{4}$ per cent. The record of mortality in twenty-one Hospitals in Europe, show the average deaths under Allopathic treatment, to be $65\frac{1}{2}$ per cent., while in ten Hospitals where the cholera patients were under Homœopathic treatment, the average deaths from that disease was $11\frac{1}{4}$ only. In a report published by the authorities of Pischowitz, (in Prussia,) will be seen that 680 cases of cholera were treated as follows : 278 treated Homœopathically, of which 27 died ; 381 treated Allopathically, of which 102 died. The proportions of death under Homœopathic treatment was 10 8-10, while under that of Allopathy, it was 33 per cent. In “The American Journal of Homœopathy,” may be seen the following statistics : In the Protestant half-orphan Asylum, sixth Avenue, New York, during seven years, from 1836 to 1842, inclusive, there were 858 children, of whom 22 died. During that period the Asylum was under Allopathic treatment. During the subsequent five years, this Asylum was under Homœopathic treatment, and the number of children was 864, of whom 6 died. Ratio of deaths under Allopathic treatment, 1 in 39 ; under Homœopathic, 1 in 144. In “Little’s Journal of Foreign Medicine,” page 94, it is stated that 16,985 Syphilitic patients were treated in the Hospitals of Sweeden, during a period of five years—that 6707 of whom were treated diatetically, (or taking no medicine,) and six weeks were, in general, sufficient for a cure.—The relapses were $7\frac{1}{2}$ per cent.; and that 10,278 were treated upon the mercurial plan, and of these the ratio of relapses was 14 per cent.

The books consulted, and the reports and statistics referred to by your committee, are believed to be those of standing authority among medical men, and the result would strongly indicate that the public, as well as the patients, in the Commercial Hospital, would be greatly benefited by the introduction of these vast improvements in medicine into that institution. Your committee is informed that the Eclectic practice which this bill proposes to introduce into the Hospital, includes Homœopathy, and that the principles of Homœopathy are taught in the Eclectic College. It is also claimed by the Eclectic Faculty, and by a numerous portion of the community, that the peculiar course of practice pursued by those professors, is still more successful than the Homœopathic treatment alone. The Eclectics further claim, that though Homœopathy is peculiarly applicable to *some cases*, and superior as a whole to the old practice, yet, from a judicious discrimination, many cases are believed to exist, in which the Homœopathic remedies are insufficient. But in these cases, other remedies are applied under the Eclectic practice with the happiest results, and in none more so than cases of Asiatic Cholera.

The majority urge objections to the provisions of the bill, which your committee will now proceed to answer briefly. One objection is made to that part of the bill which provides for the appointment of a Board of Managers, to consist of one from each of the three faculties, and this is called unfair. Your committee can discover nothing unfair in such an arrangement, except perhaps it coerces an unwilling party to yield a portion of a common right to others, only equally deserving. "Should it so happen (say the majority) that two of the faculties should issue a certain order, which the other faculty deemed injurious to the institution and its inmates, the dissenting faculty must yield its own better judgment, even though based upon many years of Hospital experience, for the almighty power of a majority has been wielded against them." Your committee is aware that it is an effort of great virtue for old incumbents in honorable and profitable offices to surrender any portion of their former prerogatives. But no ground for apprehension exists. The bill provides that the *division shall be equal*, and except the division, and the plan for the quarterly reports of the house physicians, there can be no dispute, the decision of which will be of any serious moment. There is no danger, therefore, of the majority oppressing the minority. From the situation of the several faculties, there is no reason to apprehend any two will be disposed to oppress the other: and your committee is of opinion that the passage of this bill will, by uniting the interests of the faculties as to the division of the Hospital, and making them better acquainted personally, do away with many of the dreaded asperities. The mutual interest existing among the students, meeting to attend the same lectures, and the information to be obtained by attending clinical lectures in the different schools, will be safeguards against any discord or contention that would seriously threaten the success of either. That Doctors, like other men, may disagree, is very true; but in this instance, it will be the interest of all to harmonize, and that interest will soon dictate the means to subserve the interest of all the faculties and their students.

The 11th section of the bill, which provides for the appointment of members of the Board by the City Council, is also objected to by the majority. They represent that provision as contemplating the appointment of members of the Board to fill *accidental* vacancies. Thus the majority misrepresent the motives of the friends of the bill.

The proviso to the eleventh section declares, that if there be but two members of the Board of Managers appointed by their respective faculties, and the *third* faculty *refusing*, for the space of *ten days* after notice to appoint, *then* and in that contingency, the City Council shall appoint, &c. That provision is perhaps indispensable to the attainment of the intention of the bill, i. e. *the certain appointment of one member to represent each faculty*, in the Board of Managers; for if one faculty refused to appoint, the object of the law would be defeated. It is proper that the Board consist of three members, and these if not appointed by the faculties respectively, are to be appointed by the City Council, so that neither shall have the advantage over the other, by having two physicians of the same school in the Board, and to that end it is provided that the one appointed by the Council shall be *neutral* as far as possible, and shall not be a physician. But if, after such appointment by the Council, the refusing faculties or faculty shall comply with the law in relation to appointment, then the privilege may be resumed at any time by them.

The majority object, with great force and propriety, to that provision of the bill authorizing the students to follow the faculty through the wards of the Hospital, by which "a crowd of careless strangers will surround the couch of anguish." The custom in eastern Hospitals, your committee is informed by good authority, has been to permit the entire class to follow the faculty through the sick rooms. From motives of humanity, such as expressed by the majority, that custom has been abolished in the Commercial Hospital, and the bill has been prepared with an anxious eye to that improvement. This motive prompted the friends of the bill to limit the number to "*not more than twenty*." The present arrangement in the Commercial Hospital allows the students to visit the clinical wards, containing 8 or 10 beds, in the proportion of two to each bed, so that in the large wards from 16 to 20 may visit at a time, examine the patients, quietly retire, and report to the professors. This, your committee is informed, may be done without any detriment to the patients. The clinical lectures are delivered and surgical operations performed in a lecture room, separate and apart from the sick rooms. So, it will be seen, it was to guard against the recurrence of the practice of admitting the whole class, that this limitation was introduced into the bill. But in practice, the bill while it limits the number that may visit the wards at one and the same time, will admit of single visitants as well as more, in all cases that require discretion; and your committee cannot presume, that the faculties will permit any custom which will diminish the chances of successful cure, they having so deep an interest in the successful treatment of their patients.

The majority ask, "Why did the Trustees reject the faculty of the Cincinnati College?" Your committee might ask quite as pertinently,

why did not the Trustees of Cincinnati township admit Dr. Drake's faculty? It is admitted he occupied a position pre-eminent in medical science; then why not give the inmates of the Hospital the benefit of so distinguished a physician? The simple answer is, that the law was so framed as to enable the Trustees to defeat the object of the Legislature. By consulting *Dr. Drake's law*, and the decision of the Supreme Court of Ohio, on a question arising out of that law, the interrogatory of the majority is fully understood.

It is alledged that experience in other cities proves, that separate or distinct systems of practice in the same hospital is impracticable, and would drive "concord and harmony from such an institution." Your committee is informed through a medical gentleman who has attended the Hospitals at Philadelphia, that different faculties and their students visit there for clinical instruction—that no difficulties or disturbances arise in consequence, though the attendants are students and faculties of rival schools.

Another instance may be mentioned. While two rival colleges were in operation in New York, the professors and students of both were allowed to attend the same hospital on alternate days, and to treat patients in separate apartments.

By a late publication, "*The Homœopathic Journal*," edited by A. C. Baker, M. D., of Boston, it is stated, that in the celebrated Hospital of St. Petersburg, (perhaps among the most celebrated in the world,) one-half of the inmates are treated under a Homœopathic physician, Dr. Stender, under an arrangement of the government, for the purpose of testing the relative merits of the rival systems.

And here, too, may be mentioned the fact, that in New Hampshire, (the home of the illustrious "*Dartmouth College*,") an act passed during the late session of its legislature, making a similar arrangement between the medical department of that college, and the college of medical reformers, recently chartered in that State.

The majority say that the hospital, to be useful, must be "under the management of one undivided head." So far as providing the necessary comforts of life, such as board, fuel, &c., is concerned, this is true enough, and will continue as it now is, under the management of the township trustees; but with regard to the treatment of the sick, and managing the inmates of the Hospital, your committee thinks enough has been said to show no such necessity exists in fact. No good reason has been shown why twenty physicians may not attend patients in twenty rooms, without the slightest inconvenience to either. The plan proposed for adoption by this bill, it is said, "will destroy the institution." Whatever others may believe on that subject, your committee is forced to a very different conclusion. The most learned and wise of the medical profession will repair to its wards, prescribe for the sick, and thus enlarge the sphere of its benevolence. They will cling round it in their interest, and their interest will be advanced by honors gained in successful treatment and practice. With such incentives to professional honors, the institution cannot but be safe.

Looking forward to a division, the majority ask, "how shall that division be made?" A sufficient reply can be made by saying, in the manner suited to the improvements in medical science contemplated to be introduced. And perhaps the most important consideration involved in that division, would be, whether the wards be large or small, and how to divide them so that the infected atmosphere be not rendered common to the patients. One of the reasons assigned for extraordinary success in the Boston Hospital, is, that the wards are small, and few beds in each room. This subject has been ably discussed by a medical writer, in "*The Boston Journal of Medicine*," who, after having visited numerous Hospitals in Europe and America, gives the public his conclusions in substance thus: "Small Hospitals are more healthy than large ones. The mortality is to be attributed to some extent to bad atmosphere in those places. If we reflect that the air in a moderate sized bed chamber is vitiated by one or two persons inclosed, in eight hours of the night, what must we suppose the air of a room to be, which contains from 50 to 100 patients affected with various forms of disease. Small apartments with few persons in each, are much freer from the evils of Hospital atmosphere than large ones with many patients, even though the numbers in each are proportionate to the size of the rooms, for the height of large rooms is never proportionate to its size. Because, though the small ones may be as much crowded as the large, yet they are much more easily ventilated, and the atmosphere in them much sooner purified. Epidemics peculiar to Hospitals, such as hospital-gangrene, &c., may be prevented from passing from one apartment to another, while they will affect all in the room where they begin, however large it may be."

It is said the hospital is now full to overflowing. Your committee are informed, the hospital buildings are sufficiently extensive to accommodate from 600 to 800 persons; that is more room than will be needed for the sick only, for a number of years to come. Many of the paupers now resident in the Hospital will soon be removed, in consequence of the erection of the Hamilton county poor house, which will be completed, in all probability, before the end of the coming summer, so far as to receive the poor of the county.

Your committee, therefore, thinks that the arrangement contemplated can be made without any such an outlay of money as is intimated by the majority, a sum much less will answer. Your committee will close this report by an epitome of the project contemplated by the bill, pronounced by an eminent physician, in a lecture on this subject:

"Under the proposed law a most beneficent change will be seen. Patients will freely choose their treatment from the most distinguished men of three medical faculties, and from other physicians of the city, who are willing to give gratuitous assistance. Thus will the whole medical talent and learning of the city be brought within reach of the poor for their relief. With three house physicians to give constant attendance, and with a Faculty of six or seven physicians to each department, the poor patients will have as faithful attendance as the wealthiest of the land. In each department the records will show, at any time, the treatment and its results, and if the treatment of either

Faculty should show superior success in cholera or any other prevailing disease, the other faculties, more unsuccessful, would be compelled to adopt a similar plan, or sink the reputation of their school beyond recovery. This imminent responsibility from publishing the records, would create such a vigilance and fidelity in the physicians as has never before been seen in hospitals, and the statistics obtained would induce the medical profession generally to adopt the methods which proved most successful, and would thus produce incalculable benefit to the whole country.

"The employment of different physicians in different portions of the same hospital, is nothing new. It is the only way in which a large hospital can be successfully conducted, and the difference of treatment proposed is one of its greatest advantages.

"There can be no confusion or collision, for the several faculties are to be as distinct and independent as if in three different hospitals, and the only matters of common interest between them, the division of the hospital, the preservation of order, the days of lecturing and the purchase of a library, are to be adjusted by a committee of one from each faculty, to be called a Board of Managers, which is really but a committee of conference, for their common business.

"Students attending the hospital will be enabled to receive three times as much clinical instruction as heretofore, at the same expense, and medical men from all States of the Union will be attracted by the fame of an institution in which all systems of medical practice may be learned and compared, at a trifling expense, and their true value ascertained by their immediate results.

"This open competition in lecturing will operate like the medical *concours* at Paris, in which rival professors test their comparative abilities, which have made that city the head-quarters of medical science for Europe. A similar effect will be produced in Cincinnati, giving to its medical colleges an American celebrity. The students will partake of the zeal and ambition of their professors, and each will acquire from his varied instruction enlarged views of medicine, which will prevent his becoming an ignorant partizan. Mutual intercourse will beget mutual friendship, and remove many prejudices which arise when separate.

"The medical students of Cincinnati, for several years, have manifested a most peaceable, moral and gentlemanly character. No serious disturbance or quarrel has occurred for years at either of the colleges; their lecture rooms are characterized by decorum and good humor, and so far from riotous collisions occurring, Cincinnati, with its three schools, has had less disorder among its students than several other cities in which but one school exists. The majority of the students of the city are already taught by their faculties to be courteous and liberal to those of different opinions, and the passage of the bill will introduce an era of general harmony and mutual intelligence.

"The Commercial Hospital of Cincinnati will be changed from one of the most unsuccessful hospitals ever known, to the very best in America; and, without one cent of additional expense, a library and pathological museum, both of which are deplorably needed at present,

will be established from the proceeds of the hospital tickets, for the benefit of the medical profession, and for the lasting honor of the State of Ohio, which already stands high in medical reputation, and which, under the proposed law, will soon rank among the foremost States of the Union, as to the greatness and celebrity of its medical institutions."

The bill is therefore reported back without amendment, and recommended to its third reading and passage.

All of which is respectfully submitted.

JOHN F. BEAVER,
Select Committee.

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UPON THE PETITION OF SAMUEL McILRATH, AND OTHERS.

IN SENATE—March 15, 1849.

The Committee on the Judiciary to whom was referred the petition of Samuel McIlrath and others, citizens of East Cleveland, in the county of Cuyahoga, praying for the passage of a law authorizing the treasurer of the county of Cuyahoga, or the treasurer of the township of Euclid, to pay to the treasurer of East Cleveland township, that portion of school and other taxes collected within the territory set to East Cleveland from the township of Euclid, since the fifth day of June, 1847, respectfully submit the following

REPORT:

That your committee are advised that the township of East Cleveland was set off and duly organized at the date above mentioned, a part of its territory being taken from the township of Euclid, and the prayer of the petition implies that there are at this time moneys within the hands of the treasurer of Euclid or of Cuyahoga county, belonging to East Cleveland, and collected within its present limits, which the petitioners suppose the latter township cannot attain under the existing laws.

By the act of February 18, 1848, it is made the duty of the County Auditor, in which a new township shall have been organized subsequent to the 15th day of June, 1847, immediately after his settlement with the County Treasurer, to open an account with the new township in the same manner as with other townships. In this account with the new township, it is made the auditor's further duty to credit it with such portion of all moneys as were collected as taxes, in the territory embraced in such new township. And the auditor is further authorized to charge the moneys so credited to the townships respectively out of which the new township was formed.

If the auditor of the county of Cuyahoga has performed his duties as clearly pointed out in the act above cited, the township of East Cleveland has been already credited with the moneys in question, which would have been consequently subject to be drawn from the county treasury in the same manner as moneys due other townships. If on the contrary these moneys have been inadvertently paid over to

the township of Euclid, they would be regarded in law as received by the treasurer of the latter township for the use of East Cleveland, and your committee can see no difficulty in making the distribution between these townships upon the basis established by the law.

The committee therefore are of opinion that no legislation is necessary in the premises, and pray to be discharged from the further consideration of the petitioners.

Respectfully submitted.

REPORT

OF THE

JUDICIARY COMMITTEE ON HOUSE BILL NO. 57,

Concerning Senators and Representatives in the County of Hamilton.

IN SENATE—March 19, 1849.

MR. SPEAKER: The Committee on the Judiciary have had under consideration House bill No. 57, concerning Senators and Representatives in the County of Hamilton; and a majority recommend its engrossment and passage.

The Hamilton county question, as it is called, has been argued so often and so ably, that but little new can be advanced at this stage of the controversy. This committee feels disposed briefly to record its opinions, on the subject, otherwise the bill would be reported back with a mere verbal recommendation. The constitution has several provisions relative to this matter. One of which is found in the second section of the first article. "The number of Representatives shall be fixed by the legislature, and apportioned among the several counties, according to the number of white male inhabitants above twenty one years of age, in each." It has been broadly asserted, on the floor of the Senate, that this language is almost identical with that clause of the constitution of the United States, which provides for Representatives in Congress. And it is inferred that as the states of the Union may be divided into Congressional districts, without a violation of the federal constitution, so the counties of this state may be divided into representative districts without a violation of our State constitution. But an examination of the two instruments will show that their language is materially different. The federal constitution provides that "Representative and direct taxes shall be apportioned among the several states, which may be included in this Union, according to their respective numbers." Thus far there is a similarity and only a similarity in the language of the national and state constitutions. But the latter has another provision, which seems unmistakable. "The representatives shall be chosen annually by the citizens of EACH county respectively on the second Tuesday of October." How the force of this language is to be avoided by our opponents, the committee is unable to divine. Suppose that the apportionment bill of last year, after providing for the division of the county by geographical lines, had enumerated the voters by name, and forbidden those living

in the northern division to vote for the representatives of the southern division, what would be thought of such an enactment? This is precisely what was done by the bill of last winter, except that the intolerable prolixity of naming the electors was avoided. The word "each" has a force of meaning, which, while it is perfectly comprehended by those who use the English language, is not easily paraphrased or expressed by a circumlocution. "Each company in the regiment had two lieutenants." "Each man in the platoon had a musket with a fixed bayonett." Every man perceives at a glance that the company is as much individualized in the first example as the man is in the second.

The third section of the first article of the national constitution provides that "the Senate of the United States, shall be composed of two Senators from each State, to be chosen by the Legislature thereof, for six years." What would be thought of an act of Congress dividing a State into two districts by a meridian line, the Senator for the western district to be elected by the members of Assembly representing the western section, and the Senator for the eastern district by the members representing the eastern section? Is the phrase "each state," more strongly expressive of individuality in the one case, than the phrase, "each county respectively," is in the other? If the total legislature of "each state" must participate in the election of both Senators in the one case, must not the total number of "citizens of each county respectively," participate in the election of all the county representatives in the other?

If the language of the constitution could admit of any fair and reasonable doubt, let it be remembered that it received a contemporaneous construction from the convention of 1802, which continued unquestioned until the session of 1847-8. In the provisional apportionment made by that convention, this same county of Hamilton has an assignment of four Senators and eight representatives, a greater number than it now has. Its territory was then much larger. Why did not the convention then divide it for representative purposes? Why? but because the constitution, which they had framed, would not, as they understood it, admit of such division.

The committee of Privileges and Elections in the Morgan county contested election case, in the House of Representatives, at the session of 1845-6, make use of the following language in their report on that occasion:

"For if the several counties are constituted election districts, by the constitution, any change that may be made in the boundary lines of counties, must necessarily work a corresponding change in the election districts themselves. It would surely be a difficult task to maintain a distinction between a county, composing, as it does, an election district and the election district itself; the two things are identical."

"And yet it is on distinction, which indicates no difference perceptible to the mind, that the objection taken to the votes of Homer, Marion and the seven sections is made to derive all its support. To suppose that the territory of a county may be more or less in extent than an election district, is to suppose a constitutional impossibility; for wherever

there is a county, there is also an election district, bearing the same name and having the same extent of territory. What territory and how much shall constitute a county, so that the area be not less than that required by the constitution, depends on legislative will and not on constitutional appointment. But whatever territory may be included within the limits established for the county at any time, *that county so formed*, is an election district."—House Journal 1845-6, p. 154.

The committee who made this report did not believe in the constitutional divisibility of counties for election purposes. It has been asserted that Mr. Mason, the distinguished chairman of that committee, has returned, and now believes in the constitutionality of the division of Hamilton county. It is to be hoped that this assertion does him gross injustice. Such a mysterious change of opinion would argue great folly or great turpitude.

The committee will observe, before quitting the subject, that there is sometimes a constitutional necessity for combining more counties than one into an election district. We have 85 counties, the number of representatives is limited by the constitution to seventy-two.

The great mass of the community fully agree with this committee that the enactment of last winter, dividing Hamilton county, is unconstitutional.

Is there anything in it of sufficient value to demand its continuance at the hazard of the worst social evils.

EDWARD ARCHBOLD,
Chairman Jud. Com.

REPORT

OF THE

SELECT COMMITTEE ON HOUSE RESOLUTION DIRECT- ING THE BOARD OF PUBLIC WORKS TO VALUE PUBLIC WORKS.

IN SENATE—March 16, 1849.

MR. SPEAKER: The select committee of one to whom was referred House resolution calling on the Board of Public Works to report to the next General Assembly the value of the Public Works, with a view to their sale and the liquidation of the Public Debt, together with the report of the committee on Public Works on that resolution, has had the same under consideration, and has arrived at the same conclusion as the former committee, that the resolution ought not to pass, but for entirely different, and even opposite reasons.

Before we appoint an agent to perform an important task requiring high mental and moral qualities, we should be satisfied of his skill and integrity. This resolution therefore ought not to pass until either the people themselves or their democratic representatives shall have an opportunity to reconstruct that board with other and different materials. We are groping in the dark at present. All the important financial concerns of this great people are transacted in the dark closet of a single potentate or a close cabal. The key of knowledge is turned against the people's chosen representatives. The men in this Assembly, who give their days to labor and their nights to toil, are deprived of all adequate means of information concerning the monetary affairs of this great people. And we distrust the capacity but much more the willingness of the Board of Public Works, to relieve our ignorance. That board, in its late report, has given us a pretended table, showing the value of the Ohio canal "as a mere investment of capital." We much suspect that the materials of this table are taken from some of the books of apocrypha. Whether correct or not, the members of this Assembly do not know and the Board of Public Works will not tell. In order to calculate the profits of a capital, its amount must be known.

In December 1843, the House of Representatives by resolution, requested the Auditor of State to report to that House, "the original cost of construction of every public work in this State, constructed by the State since January 1825, together with the annual cost of repairs. The annual income whether accruing by tolls, fines, water rents, dividends, or otherwise; and the names, salaries, emoluments

and perquisites, if any, of all officers and agents employed about the different public works in this State. In all cases stating the different items of each particular work separately and in tabular form as far as convenience would admit. And any other information he might think pertinent to the subject; and calculated to facilitate a thorough investigation on the subject of our public works."

This resolution came from the committee on RETRENCHMENT, and was addressed to an officer, whose signal and acknowledged skill and ability have never been surpassed in our State. We quote a portion of the reply from Document No. 23, Vol. viii., December 23, 1843: "Your first inquiry is as to the cost of the public works, constructed by the State. I regret to be compelled to say to you that although this important item should be, yet it is not upon the records of this department. Upon a former occasion, in answer to a similar interrogatory, I spent much time and labor in an investigation of my own as well as the books of the canal fund *commissioners*, but was unable to arrive at any certain information on the subject.

"Prior to the first day of April 1840, all moneys appropriated to the public works were received direct from their sources, by the fund commissioners and by them deposited in sundry banks of the State, to be disbursed on the several improvements on the checks of the acting commissioners. Since the time above specified, all such funds have passed through the State Treasury and been reported in my annual reports to the General Assembly."

From this it appears that the democratic General Assembly, which met in December, 1839, had first introduced the system of keeping the accounts of our expenditures for public works in the departments at the seat of government.

Mr. Brough then went on to inform us, in substance, that the information which we desired could be had "only from the Board of Public Works;" that is, when translated into plain English, the Board of Public Works have had the whole thing in their own hands. They know if any body does. Either they have kept their own accounts, or else none have been kept. The financial officer of the State knows nothing about the matter. The public departments, at the seat of government, have no account of the concern. That board has had things all its own way. There have been no CHECKS—no accountability—no responsibility—no means of detecting fraud, or discovering imposition. God help you, if you will not believe these *knowing* gentlemen's stories in their own favor. There is no remedy for your scepticism or your infidelity. You must open your mouths and shut your eyes, and take whatever they choose to cram down your throats. "You must be thankful for the gift and say, God bless the giver, and not look the gift horse in the mouth."

The same resolution was afterwards moved in the House, to be addressed to the Board of Public Works, but was abandoned as perfectly futile, and productive of no reliable results. The House felt a kind of instinctive consciousness that any account rendered by that board of their expenditures, under a system so wild, so irregular, so inarti-

ficial, so unguarded, and so liable to abuses, would be utterly untrustworthy.

What would be thought of the system of selling our public lands with no office except that of the receiver of public moneys? No checks, no safeguards, no duplicate receipts, no recorder of deeds, no register to keep accounts, no quarterly returns of those accounts to the State Auditor!!! The most miserable bungler that ever succeeded in getting a land office bill through the General Assembly, knows that he must provide all these safeguards, and more.

This piece of history will afford a key to the fabulous stories of whig economy, frugality, and thrift, in constructing the old works, and democratic wastefulness and extravagance in constructing the new. The cost of the new works since April, 1840, can be learned from the public offices; the cost of the old works can be learned, if learned at all, from the interested statements of the men who made the expenditures. Did these nice whig gentlemen invoke the aid of clouds, and night, and darkness, in order to carry on their works of frugality and economy, and parsimony, and patriotism? Jew, Apelles! come forward and profess your belief in their stories, just to oblige them—the subscriber never can!!! Did we suppose that the people, or any considerable portion of the people, believe this legendary lore about whig economy, as contrasted with democratic extravagance, we should address them in scripture language and say, “O ye simple ones, how long will ye love simplicity and fools hate knowledge?” But the gauze is too thin. The people see through it. Their wisdom and their sagacity will suspect the contrivers of a system of pecuniary expenditures liable to the grossest abuses, and unattended with any checks or safeguards necessary to the preservation of honesty and fair dealing.

The knowing gentlemen who directed the expenditures on our first public works, may have been very nice and very honest, but they have failed to preserve the requisite proof. Their works of patriotism were performed under the cover of the night, and fail to excite one spark of gratitude in the breasts of men who know their rights.

If these legendary tales about the smallness of the capital invested by whig economy, in the first public works, are not true, the Board of Public Works has showed itself unworthy of our confidence, by detailing them to us as the basis of their arithmetical statements. Whether true or false, they are unaccompanied with the proper proof, and that board has insulted our understandings by presenting us statements drawn from sources so suspicious as to induce the gravest doubts. It is true the key of knowledge is turned against the people's representatives in the two houses; but we are unwilling to be treated like children, and have apocryphal tales told to us, as if our easy credulity could make no resistance.

If these stories about the whig management of our finances in constructing the Ohio Canal are correct, the proof of their correctness ought to have been preserved. A system of responsibility ought to have been adopted. Those checks and safeguards, which exist every where else where there is an exchequer and public expenditures,

ought to have been provided. As nothing of the kind was done; as we are left to grope in the wide field of conjecture without the necessary means of information as to the policy of passing this resolution, this committee cannot recommend to the Senate to give its consent. Moreover, the agents proposed to execute this commission are the successors and copartizans of the original inventors of these fables about whig economy and democratic profligacy. They are the objects of our aversion and distrust, and we are unwilling to invest them with important and delicate functions until proof shall have been afforded of their integrity and capacity. We fear that the same spirit of fraud which animated their predecessors to invent these fables, now animates these gentlemen to make a profitable use of them. We may err in passing the resolution—we cannot err in rejecting it. The present irresponsible system of ONE MAN power cannot last. It must give way before the indignation of an enlightened people—the throne must crumble. When the people's assembly shall be restored to its rightful authority—when their friends shall be in a majority here, and shall have made a full and searching investigation of all the departments of the government, they will perhaps possess lights which will enable them more safely to determine on the policy suggested in this resolution. Till then it seems to the committee unsafe to move in the matter, and the rejection of the resolution is therefore recommended.

EDWARD ARCHBOLD.

REPORT

OF THE

SELECT COMMITTEE ON SENATE BILL No. 8, TO ABOLISH CAPITAL PUNISHMENT.

A majority of the select committee to whom was referred Senate Bill No. 8, to abolish capital punishment, have had the same under consideration, and report the same back with amendments and recommend its passage, with the following remarks:

In the examination of this subject, an important inquiry at once suggests itself to every candid mind; and that is, whether any power, except that which gave it, has the right to take away human life for the commission of any crime.

The strongest grounds upon which the claim of *right* has ever, in the judgment of your committee, been rested or placed, is upon the principle of self-defence or self-preservation, as if one person attack another under circumstances calculated to destroy life or do some grievous or bodily harm, that such an assault will justify taking the life of the aggressor on the spot; or when two individuals are placed in imminent danger, and the one, for the sake of self-preservation, is bound or induced to destroy the other.

These and the like arguments have been advanced to show and prove that the state, in her sovereign capacity, upon the same principle of self-preservation, has a just right in taking away the life of the offender.

In the case of treason, where the very end contemplated by the offender, is the destruction of the Commonwealth, the analogy seems, at first view, to be very close; but upon a full and careful examination, it will be seen the cases are dissimilar; for if the state possess the power to protect herself, she of course, can secure the aggressor and place him beyond danger without taking his life. But in the individual case supposed, the person is to act instantaneously upon equal terms, and without reflection or pre-determination; and the cases being dissimilar, consequently the force of the argument felt in the one, does not obtain in the other.

In the case of murder, there is no analogy whatever and of course there can be no argument drawn from the personal right of self-preservation, to justify a population of over two millions of people, to hang

a man because there is imminent danger that *he*, solitary, alone, will destroy every individual of the commonwealth!

It is readily granted that, for the purpose of securing the ends of justice and society (the security of our persons and property) the people have a right to punish offenders; but does this right justify the destruction of human life in any instance or for any crimes? Certainly not; unless it can be made to appear clearly that that end can only be secured by such rigorous and cruel punishment.

If the offender can be as effectually prevented from repeated aggressions, by any other punishment than capital, certainly the humanity of the age in which we live dictates that course. Let him be cast off from society and consigned for life under the instructions of the pious and good men of the land, where he will be left in the enjoyment of time and opportunity for reflection, reformation and repentance. For we read in the Book of all books (the Bible) "thou shalt not kill," then why condemn the poor unfortunate offender to the gallows without time for repentance.

It may be said that capital punishment, by way of example, has a salutary effect upon the opinions of mankind. This proposition, in the absence of experience, has been earnestly urged by many able commentators upon criminal law; but recent developments, both in the new and old world, have proved to the contrary.

Capital punishment took its origin in the dark ages, and evidently originated in the ferocity of human nature. We should look to the lights of experience upon this, as well as all other subjects; and then it will be found, that a great proportion of crime is committed under circumstances which truly present the offender more as the fit subject for correction and instruction, than for punishment, in the true sense of the word. Let us look to that sentence which will attain both objects. For to punish alone is vindictive; but to punish, and at the same time aim to correct the offender, is humane, just and praiseworthy.

So far has public opinion been impressed with the absurdity and cruelty of the law, as it now stands, that jurors, in cases of murder in the first degree, have nearly legislated the law away, by leaning to murder in the 2d degree.

Laws that are too severe, are temptations on the part of criminals and to perjury on the part of the prosecution, since he would rather burthen his conscience with a false oath, than with a true one, which would clothe cruelty with power to kill, in the garb of justice. Such laws therefore reverse the natural order of things—transferring the indignation of public feeling, which ought to follow the criminal, to the ferocity of that sentence, by which he is to suffer, and taking from legislation, its main support of public esteem and approbation. For the victim of too severe a law is considered a *martyr* rather than a *criminal*. That which we pity, we cannot at the same time detest.

But there is, if possible, a stronger objection against such laws. They open the doors to all kinds of prevarication and partialities; for they afford the executive the power to commute the punishment of one under the pretext of mercy, or destroy another more friendless, with

the *forms* of justice. Hence it is not of unfrequent occurrence that jurors, in criminal cases, resort to prevarication and even perjury from an amiable determination to adhere to the side of mercy rather than to the law, indicating a preference for even perjury and prevarication as matters of lesser weight and moment, when the life of a fellow creature is put in the scale against them. The fault is in the cruelty of the system, not in the court or jury; the latter too often reflecting naught but public opinion.

As the criminal code now is, the following motto should preface it, to wit: "The extreme of law is the extreme of justice." For "the dictates of reason, the eloquent pleadings of humanity, and the rules of an enlightened public policy, all call for a change." Let the law recognize human life as sacred; provide, as our state has done, safe and comfortable quarters for felons of every grade; in cases of murder at least annihilate the pardoning power, and thus annihilate the law which makes the body politic (at least "*particeps criminis*,") a murderer.

The foregoing is a brief sketch of our views on this important subject, and a portion of your committee are of opinion that a great majority of the people of Ohio entertain similar views.

All of which is respectfully submitted.

GEO. D. HENDRICKS.

R E P O R T
OF THE
SELECT COMMITTEE, ON SENATE BILL NO. 64.

The select committee to which was referred the petition of sundry citizens of this State, and the bill prohibiting officers elected or appointed under the laws of the State of Ohio, from acting in cases of alleged fugitive slaves, and to prohibit the use of jails in this State to the captors of slaves, had the same under consideration, and now beg leave to

R E P O R T :

Your committee, though not having the time necessary for ample investigation, contemplated by the petitioners, and suggested by the several provisions of the bill, is yet, nevertheless inclined to offer some views; sustaining in a feeble degree its recommendation of the engrossment of the bill.

It is true, the importance of the subject and delicacy of the legal questions involved, ought to deter your committee from attempting to perform such a task. But though its reasons may be few and inconclusive, and the propriety of the proposed law rendered none the less doubtful or obscure, yet, with a clear conviction, that the principles contended for are correct, and the honor of the State attempted to be in some measure vindicated, the committee does not hesitate to make public the reasons for its conclusion.

The committee believes, that a proper and just exercise of the constitutional power of the State, will effectually accomplish the object of the proposed law. That the carrying into complete execution its provisions, should it become a law, will not infringe the just rights of any citizen of this or any other State. That cases frequently do occur, against which the proposed law will provide a proper remedy, is not doubted.

The fixed principles of the law, founded on the natural and essential rights of mankind, have been perverted for the purpose of enslaving a part of the people of our Empire. And, while our countrymen are yet loud and long in proclaiming merciful and liberal theories of government, that perversion has rendered those theories dreadful in practice. Merchandise of men, women and children, and markets for

such traffic, has become a species of constitutional parlance at our capital, and is better known, and more carefully cherished in many parts of the *Model Republic*, than the laws relating to the relief of the poor, or the education of poverty's children.

Slavery not only desolates the States that nurses and guards it, but it in some measure renders unhappy that State, so unfortunate as to claim a common boundary with it. Wherever it obtains control of the law-making power, it becomes reckless in unjust attempts to extend its power and desolating influences. It prompts government to depart from its proper functions, absorbing all its powers in efforts to extend the curse and perpetuate it. It has been the principal instrument, by which the most grievous wrongs have been inflicted on the free States and their citizens; and as if conscious of the injustice, its friends and supporters, claim a constitutional right to oppress and enslave. That violence and injustice have marked the progress of slavery, few will deny, but even after such denial, the truth still remains a sad commentary upon the professions of the enslaver, and his practices.

The injustice which gave rise to the suggestions of the petitioners, is not confined to an isolated or unavoidable case. Such instances are growing numerous. The free states are reduced to a common hunting ground for slave catchers, through means now said to be reduced to system, and planted on the sanctions of the constitution.

The victims of this despotic violence even in the free States, have become too numerous to be passed in silent submission, or without exciting the sympathy, and arousing the love of justice of their fellow citizens.

For these reasons, the feverish state of the public mind, and the excitement among the reading and reflecting masses, is not in the least strange. When a continued series of abuses and aggressions, tending to the same result, no longer excites and stimulates the citizen to his duty, the cause of free government must then be acknowledged in its decline. Our fellow citizens, on the questions involved in this report, have often spoken, and in such manner as by common consent, fixes a limit to the outrages committed by negro hunters, who have hitherto been prowling through the State. It is conceded on all hands, that slavery may take its "pound of flesh," but will be allowed to draw no more "blood" in the taking.

Its advocates have hitherto enjoyed no little advantage arising from the prejudice entertained by many of our countrymen towards the enslaved. But that advantage is dwindling to one of less importance every day. Slavery has, by its all grasping and avaricious injustice towards the free States, not only foregone that advantage which prejudice gave slaveholding, but the greater, if possible, it might have enjoyed from the universal love of the citizens of the free States, for the quiet pursuits of peace. It is now, as it ever has been, a nursery of the most boisterous passions of man, hence order and peace loving communities in confederacy with it, have no security against the desolation of war, of misery, and want, which its policy inculcates and produces. Slavery has already in more than one instance, involved the Union in war, for malevolent and selfish purposes.

The power of the institution has put to the test all the moral energies of our Union ; but threatening, as the impending crisis now seems to be, there must be no quailing before it. Nor should the prayer of the petitioners be denied if the principle itself be proper. It is true the judgment of our constituency is not uniform on the questions involved in the proposed law ; but with deference to all, it is submitted whether it is probable, there ever will be a time when violence will acknowledge its wrongs, or men cease to differ in opinion, in regard to them.

At the threshold, your committee will be met by an objection to the law proposed, which objection assumes the questions involved have been settled against the petitioners by the decision of the Supreme Court of the United States. It will doubtless be urged, that the only proper remedy against the evils of slavery, is exclusively with the slaveholders themselves. That if a slave holding State, by law, reduce men to property, the free States are prohibited from treating *such property*, as persons ; and it is an allegation made almost daily, that the constitution of the United States, recognized slaves as property. The federal court with all its leanings in favor of the pretended rights of slavery, has not yet so misconstrued the constitution, and it is more than probable no such decision will ever be made by that court. Be that as it may however, as the law now stands, slaves are recognised as persons, and "not property," by the constitution of the United States. *Groves vs. Slaughter*, 15 Peters, 449. Here too may be mentioned the controversy between the Governors of New York and Virginia. Governor Seward maintained with unsurpassed ability, that the States were not bound to regard slaves in the light of property, while Governor Gilmer maintained the contrary, but without effect.—In *Prigg's case*, the Judges vied with each other in contradictions. One portion of the court held the act of 1793, to be the exercise of an exclusive power in Congress, another portion of the court held that Congress had only concurrent power with the State Legislatures, while a third portion held a third opinion, that the master of a fugitive could not exercise the power conferred by the act of 1793, if the States not recognizing slavery, prohibited recaption by statute. No question of constitutionality was directly before the court in the *Prigg case*, and what was said by the judges, was mere *dictum*, and therefore inconclusive.

In the case of *Jones vs. Vansandt*, it is true, the constitutionality of the law of 1793, was affirmed by the Supreme Court, and has added one more proof to the previous list, that slavery has again advanced upon the right of the free States, by the conversion of the right of *reclamation*, into a right of *RECAPTION*. But none of these cases militate in the least, against the principle contended for by the petitioners; they go no farther than what has been time and again resolved, by the Supreme Court of the U. S. The provisions of the bill assume, that Congress has no power to authorize State Courts to execute any of the *judicial power* of the United States Government. That it is competent for the State of Ohio to prohibit the exercise of all federal power, by her officers, both ministerial and judicial.

Another argument, however, will be urged against the proposed law. The objector will assume that every attempt to abridge the facilities and legal machinery of the slave owner, is a breach of faith, and a *manifest* infraction of the compromises of the Constitution.—These compromises have the inglorious privilege of making the constitution a modern Janus, with both his faces turned towards oppression. And if an inquiry be made into their extent, or the subjects embraced and controlled by them, no one can answer, and until they are set forth in some new propagandist scheme, would seem the mere jargon of political gamblers. But when slavery's interest, once requires the application of these floating principles, forthwith they are interpolated upon the constitution, and freedom suppressed accordingly.

Again, the objector will argue, that the enactment of a *State law*, contravening any of the provisions of the act of Congress of 12th Feb. 1793, would be obnoxious to the evils of nullification, and therefore revolutionary.

Doubtless such would be the case, if the act of Congress could *constitutionally* enjoin upon *State officers* the observance and execution of such a law. The very point has however been determined in numerous cases. The judicial power of the United States, must be executed by courts deriving their authority under the federal constitution. Such authority cannot be delegated to State Courts. The non-slaveholding States concede to slavery, that it is a State institution — a creature of force, sustained by the municipal law in which it exists—that Congress has no power under the constitution to regulate it within the States, or abolish it.

If that be true, (and it is claimed as true by the slaveholders themselves) then the act of Congress under consideration, is of no constitutional obligation whatever so far as that law proposes to embrace fugitive slaves. And unless the constitution invests Congress with plenary and sovereign power over the subject of slavery, it was not competent to Congress to enact such a law. That law proposes to inflict penalties, and create forfeitures, for acts not wrong in themselves, nor forbidden by the constitution. It further attempts to punish as a crime, acts of the merest benevolence and charity, and presumes to call to its aid, the magistracy and jails of the state, in the execution of its unwarrantable provisions.

It will be obvious from a slight examination, that the only concession made by the constitution, to the person claiming the *service* or *labor* of the fugitive is, that he "*shall be delivered up on claim of the party to whom such labor or service may be due.*" The act does not propose a penalty against a refusal to "*deliver up on claim*"—the only act forbidden by the constitution. But on the contrary, inflicts unreasonable and oppressive pecuniary penalties for acts such as *harboring* or *concealing*—*obstructing* or *hindering* the master, his agent or attorney, from "*seizing*" the fugitive or "*rescuing*" him when seized. Although Congress might have properly given effect to that part of the constitution that declares the fugitive "*shall be given up on claim,*" yet it is contrary to the well settled and approved construction of the constitution, to create new offences, and prescribe specific remedies, unless in cases

where the power to do so, is given in express terms, or by the clearest and most necessary implication. If, in the whole range of the duties enjoined on the Federal Government by the constitution, there be a case, that, more than all others, demands a strict construction, it would seem to your committee that case is furnished in the conflict of laws on the question of slavery's constitutional rights.

No fugitive slave case had been determined previous to the passage and approval of the act of 1793—none had yet occurred. The case which gave rise to the legislation in relation to that part of the constitution embraced by it, was that of "*a fugitive from justice*" and not "*a fugitive slave*." The inducements to the action of Congress at that period, were, the Governor of Virginia refused to surrender, on the requisition of the Governor of Pennsylvania, a fugitive from justice.—The Governor of Virginia inclined to the opinion that the constitution did not execute itself, but must be carried into effect by legislation in Congress. Here, slavery to fortify itself, and augment its power, seized upon this abstraction; and not content with the advantage gained for it (as was supposed) as regards the states, the provisions of this act of Congress enlarged its influence and secured its power of recaption, in *territories*, and finally, by the act of 27th March, 1804, in all "*countries subject to the jurisdiction of the United States*."

Pretensions more extravagant, cannot be well conceived, and perhaps that very extravagance may constitute the right arm of the friends of justice and humanity. Certain it is, the aggressive spirit of slavery, and its friends, has done much to arouse the freemen of the Union to the assertion of right, and it is hoped they will never aid directly or indirectly in its extension, nor compromise with the wrong.

An act to enable the people of the eastern division of the Northwestern Territory to form a constitution and state government, was passed and approved April 30, 1802, by which it was prescribed as a condition, that the constitution so formed should be republican in its character, and *not inconsistent with the ordinance of 13th July, 1787*. A constitution was formed 29th November, 1802, and presented to Congress, January 7, 1803. On the 19th February, 1803, an act was passed and approved for the due execution of the laws of the United States within the State of Ohio. The people of Ohio having complied with the terms prescribed by the act of Congress of 1802, became a confederate State by compact.

The act of Congress enabling the people of the eastern division of the Northwestern Territory to form a state government, and providing for their representation in the Congress, was nothing more than the act of one of the parties to the ordinance and in pursuance of it. No act of Congress, nor resolution, for the admission of Ohio into the union is known—none never was passed; because the compact was in the nature of treaty stipulations, and irrevocable. The features of its government were outlined in the ordinance—the principles of which the people assented to at the formation of their constitution. Hence the formal mode of admission was not deemed necessary. And although it may be shown that, subsequently, states organized within the limits of the Northwestern Territory, as to which similar terms

were prescribed by acts of Congress, were regularly and formally admitted into the union, yet that circumstance will not change nor alter the fact in regard to the State of Ohio. No such formal admission was thought necessary; and until the lust of power suggested that states should, in the days of their weakness, be rendered more dependent, it was not so deemed.

No proposition can be more clear than that the right to demand a fugitive slave is limited to a party who claims such labor or service, by virtue of the laws of one of the *original* states. The proviso of the ordinance declares "that any person escaping into the same (N. W. Territory,) from whom labor or service is lawfully claimed, in any one of the ORIGINAL STATES, such fugitive may be lawfully *reclaimed* and conveyed to the person claiming his or her labor or service as aforesaid.

But here again an objection is interposed. It is said the State of Ohio cannot defend itself under this clause of the ordinance. It is true, on the trial of the case of Wharton Jones vs. John Vansandt, tried in the circuit court of the United States for the district of Ohio, the learned judge who presided at the circuit court (Judge McLean,) doubted whether the ordinance of 1787 was or was not then in force. But as it was a mere doubt, and not supported by that learned judge with any reason whatever, the authority is entitled to but little consideration.

The supreme court of the State of Ohio, in the case of Hogg vs. Zanesville Canal and Manufacturing Co., 5 O. Rep. 414, maintain that Ohio did not abrogate the ordinance by becoming a state of the union; that it is a compact of the highest obligation, and cannot be altered without the consent of the people of Ohio, and of the United States, through their representatives.

Will it be seriously contended that the citizens of Ohio can be deprived of the benefits conferred on it by the ordinance without their consent, or that the irrepealable compact upon which its existence as a confederate state depends can be avoided and rendered nugatory without its consent directly and emphatically given? Certainly not. For if once the ordinance be swept away, the State of Ohio would occupy her condition as a confederate state of this union by mere sufferance only. Ohio never did adopt, accede to, or ratify the constitution of the United States. The ordinance was made the basis of her constitution by the congress having supreme legislative power over its territory. To the conditions prescribed the state assented, and the compact by such assent became perpetual.

The ordinance is perpetual notwithstanding the declamation of politicians in the halls of representation, or the doubts thrown from the bench of justice. "It is," says a jurist of eminence, "a treaty which was generously made by an intelligent and powerful confederacy, with five states then unborn—a covenant between the strong and vigorous actors of the present, and the unknown and unseen generations of the future, for the common safety and happiness of all."

The ordinance then being in full force; that of itself limits the supposed right of the slaveholder, his agent, or attorney, to the *reclama-*

tion of a fugitive held to labor or service by the laws of one of the original states. The number of our common constituency who now deny the rule of strict construction, as applied to the federal constitution, is very few. It has become an axiom in American law and politics, denied by no branch of the government, or any party. Let, therefore, that acknowledged rule be reduced to practice, and encroachment under cover of law will cease to embarrass our courts, and fewer outrages be committed upon crimeless men.

The friends of the act of 1793, maintain that the judiciary have settled the question of reclamation, and that the right to reclaim is not restricted to the states originally party to the ordinance, and which formed the federal constitution.

Your committee hopes to be pardoned for repeated digressions, and begs leave here to say, that the history of slavery interference with the functions of the federal government, executive, legislative, and judicial, will always furnish grave instruction, and the examples taught by it will only be studied for the purpose of avoiding them. Many of the great lights of the law are extinguished, and many of the time honored maxims of humanity, morals, and jurisprudence, are not only disregarded, but totally inverted to sustain and fortify the slave institutions. This may be thought unnecessarily severe, but it is undeniably true—a truth proclaimed from the judgment seat, in numberless cases and instances, and as well supported as any other dictums of the judges. Very true, too, the federal judiciary, in some instances, labored to extort a sanction from the constitution for what was carefully excluded from it, both by the convention that framed and the people who adopted it. It will be readily admitted it is easier to find fault with those things than correct them, and the slave code may, perhaps, remain as a plague spot upon the body of this *model republic*, until an American Junius, by his pointed truths, shall probe these political ulcers, and a Burke shall unmask the De Burghs, the Jeffreys, and the Impeys of our country, in language not to be misunderstood.

A distinguished gentleman of the South, and a veritable judge too, charged the decision of Chief Justice Marshall, in the case of *McCulloch vs. The State of Maryland*, with corruption; because, as was reported, the Chief Justice was a stockholder in the institution whose powers were the subject of adjudication in that case.

Another distinguished man, then chief magistrate of the Union, stultified the judicial authority of the same case. Notwithstanding it is well known the charge against Chief Justice Marshall was false, yet who will deny the conclusion that, if the Chief Justice had been personally interested in the decision of the court, its authority would have been of little legal or moral force, and by common consent disregarded. With how much force, then, does the rule apply to *judicial slavery*? A majority of the federal judges are now, and always have, since the political revolution of 1800, been slaveholders; and so far personally interested in the questions touching the limits of the right of the master to his slave.

Although it may be denied that the judges are interested directly,

and such denial may be true, yet it cannot be avoided ; an influence resulting from their interest necessarily biases the judgment.

The doctors of the slave church set up for themselves and others a rule in relation to the alien and sedition laws, which might be applied to slavery, as there is a sort of consanguinity uniting them. These laws were considered by the reformers of 1798-9 *palpably void*, and therefore not obligatory on states or individuals, although one of them could only have been held void by implication.

The judiciary of this Union, and its authority, is viewed by the committee, with becoming solicitude, and freely acquiesce in the truth, that there exists no controlling power, either under the federal or state governments, capable of dictating to the tribunals of justice, the course to be pursued. That the stream which flows from the independent exercise of judicial functions must be permitted to hold its course; unchecked by influence, other than the law. And doubtless the Roman people felt the same reverence, and acknowledged the same truth, at the moment when Appius was driven from the judgment seat, for his unjust decree, that *Virginia* was a slave.

The most jealous care has been taken for a half century, to keep a slaveholding preponderance in the Supreme Court of the United States. And it is not, perhaps, altogether unparliamentary to say, the judicial power of the government being the nearest an independent power, slavery is more secure there than with any other branch of the government. It should be remembered as an axiom of truth, in politics as well as morals, that whatever power in any government is altogether independent, is absolute also,—in theory only, so long as the spirit of the people is up and vigilant, but in practice also, when the spirit relaxes or that vigilance sleeps.

Judicial men, like others, are equally fallible. Ambition—the lust of power and place has often sullied the judge's ermine. To this truth we may be unwilling to lend an ear, but cannot deny the fact.—Lord Chancellor Bacon suffered private solicitations to dictate many of his decisions and decrees in chancery. Chief Justice De Burgh, for promotion to an Earldom, (Earl of Kent,) corruptly counseled the suppression of *Magna Charta* itself, and he was successful both in his counsel and its reward.

The judiciary on the subject of slavery never did, and never will command entire confidence. Its action within its proper sphere is entitled to, and will receive full faith and credit; but not implicit obedience. It would be contrary to an unalterable law of the human mind, that judgments and determinations of the courts, given against justice and right, should be freely acquiesced in. And it would be passing strange if the United States courts were incapable of misconstruing the constitution and law, in respect to slavery, when, of their judgments on other branches of the law, hundreds of cases now stand upon appendixes under the heads of "cases doubted," cases "supported by no other authority than judicial dictum," and cases "overruled and denied." If the memorable case of James Somersett had been tried a few years earlier than 1772, that free man would have been remanded to the custody of his claimant as a chattel. For, in

the same court where *Somerset's* cause was heard, *trover* had been maintained for a slave. In 1745 Lord Hardwicke held that *trover* was maintainable in the British courts, for a slave, if a heathen or unbaptized, and that was the last case of that kind in England. "Whatever inconvenience, therefore," says Lord Mansfield in *Somerset's* case, "may follow from the decision, I CANNOT SAY that this case is allowed or approved by the law of England, the black must therefore be discharged."—20 State Trials 75, 1772.

Upon the whole then, with the light of history before us, and evidence drawn from the wisdom of experience, on this subject, your committee may affirm, without disrespect to the American Judiciary, that justice and humanity ought not be immolated on the altar of *stare decises*. Humanity should not cease to plead for the right, nor the law of self defence be stricken down by the stereotyped answer, "though the decision of our courts be against natural right, and the clearest justice, yet we are bound to support the wrong implied."

It may not be altogether unworthy of remark, that the constitution of Ohio was formed immediately after the promulgation of the celebrated Resolutions of Virginia and Kentucky, of 1798. These resolutions proposed to unseal the arcana of political philosophy, and shed upon the world new light in regard to true constitutional and republican principles. If the principles contained in that famous political creed ever had any peculiar merit, doubtless they have that merit still.

Apply the principles of these resolutions, in their ordinary meaning, and not a vestige of the act of 1793 will be left, to operate in the states, that do not recognize the lawfulness of slavery.

The principles of that celebrated creed are thus summed up by a master hand :

1. That the general compact of Union between the states, was constituted for specific purposes, and with certain definite powers, each state reserving to itself the residuary mass of right of self government. That whenever the General Government assumed undelegated powers, its acts were unauthorized and void ; and that each state being an integral party to the compact, of which there is no common judge, had a right to judge for itself, as well of infractions, as the mode and measure of redress.—*Royners' Jeff.* 386.

2. That confidence is everywhere the parent of despotism.

3. That free government is everywhere founded in jealousy, and not in confidence.

4. That it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power.—*Ib.* 386.

These are supposed to be the articles of the true political church South. Indeed, the entire catechism is good authority whenever cited by its title—the resolutions of '98. If states were capable of mutualities, on moral and correct principles, (as they ought to be,) the criteria here furnished by their own rules, when applied to themselves, (the slave states,) could not constitutionally insist on any portion of the act of 1793. But the prayer of the petitioners, which the bill embraces, purports not to embrace at this time, those clauses of

the act of 1793, relating to the jurisdiction of the district courts of the United States. So far as that act presumes to confer authority on state officers, or command the ministerial acts of those officers, in relation to fugitives from labor, and so far only, the bill provides a remedy by prohibition. That much the state of Ohio has clearly a right to do, through her legislature. And it is her duty to go to the very verge of the constitution, to intercept the unlawful acts of the oppressors of men.

In conclusion, your committee would further say what is perhaps acknowledged generally, but practised seldom. Peace and security to ALL, should be the object and end of government. The due preservation of the rights of the people, should be an indispensable ingredient, both in the law itself and in its administration. For when that obligation is disregarded, the government becomes destructive of the RIGHTS OF MAN, and ceases to be a blessing. And then too, it becomes unworthy the support of any one who professes to be free.

A BILL

To prevent Magistrates of Counties, Cities, or Towns Corporate, Judges, Justices of the Peace, and other Public officers, from acting in official capacity, in cases of alledged fugitives from labor, denominated slaves, to prohibit the use of jails and other public buildings, to slave captors.

Sec. 1. *Be it enacted by the General Assembly of the State of Ohio,* That from and after the passage of this act, no magistrate of a county, or city, or town corporate; and no judge, or justice of the peace, or other officer, exercising jurisdiction, as such, under the constitution and laws of this State; and no sheriff, coroner, constable, or other ministerial officer, holding his office under the constitution and laws of this State, shall have or exercise jurisdiction, or take cognizance of any case arising under the act of congress, passed twelfth of February, seventeen hundred and ninety three, entitled, "an act respecting fugitives from justice, and persons escaping from the service of their masters."

Sec. 2. No magistrate of a county, or city, or town corporate, judge or justice of the peace, or other officer, elected or appointed or commissioned under the constitution and laws of this State, shall grant or issue any certificate or warrant, for the arrest or removal of any alledged fugitive slave.

Sec. 3. No sheriff, or deputy of said office, coronor, constable, or other officer, holding office under the constitution and laws of this State, shall arrest, detain, or otherwise imprison any person claimed as, or alledged to be a fugitive slave.

Sec. 4. No jail or other prison, nor any of the buildings belonging to this State, or any county thereof, shall be used or allowed, for the purpose of detaining or imprisoning any alledged fugitive slave.

Sec. 5. Any jailor, or other officer, judicial, ministerial or corporate, offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and shall on conviction by indictment in any

court of competent jurisdiction, be fined and imprisoned at the discretion of the court, the imprisonment to be in the county jail not exceeding one year, and the fine not to exceed five hundred dollars.

Sec. 6. All laws and parts of laws inconsistent with this act, shall be, and the same are hereby repealed.

Act of 12th February, 1793, 3d and 4th Sections.

Sec. 3. "*And be it also enacted*, That when a person held to labor in any of the United States, [*or either of the territories on the North West, or South of the River Ohio,*] shall escape into any other of the said states or territory, the person to whom such labor or service may be due, his agent or attorney is hereby empowered to seize and arrest such fugitive from labor, and take him or her before any judge of the circuit or district courts of the United States, residing or being within the state; or before any magistrate of a *county, city or town corporate*, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony of affidavit, taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate, to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the state or territory from which he or she fled."

Sec. 4. "*And be it further enacted*, That any person who shall knowingly and wilfully obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared, or shall harbor or conceal such person after notice that he or she was a fugitive from labor as aforesaid, shall for either of the said offences, forfeit and pay the sum of five hundred dollars, which penalty may be recovered by, and for the benefit of such claimant, by action of debt in any court proper to try the same; saving moreover to the person claiming such labor or service, his right of action, for, or on account of said injuries or either of them."

REPORT
OF THE
STANDING COMMITTEE ON CLAIMS ON THE PETITION
OF JAMES L. REYNOLDS.

—
IN SENATE—March 8, 1849.
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The standing committee on Claims, to whom was referred the petition of James L. Reynolds for compensation for damages sustained by the flood occasioned by the breach in the embankment of the Sippo Reservoir, have had the same under consideration and

REPORT:

That they have examined the petition and are unable to determine upon what ground the petitioner expects remuneration for the loss sustained.

The claimant sets forth in his petition that he was a wholesale grocer and commission merchant, in the town of Massillon, in the county of Stark; that he owned a warehouse in said town in which he was doing business; that some years since the State constructed a reservoir at the outlet of Sippo lake, for the purpose of supplying the Ohio Canal with water during the summer season.

He further states that on the 23d day of February, 1848, the embankment of said reservoir gave way, and the large body of water which had accumulated therein was discharged through the town of Massillon, by means of which his said warehouse was washed away, and his goods and property therein destroyed, and that he sustained a damage of eight thousand dollars.

Admitting, for the sake of the argument, that the State would be liable for damages sustained in consequence of any defects in the work, growing out of the want of capacity or want of care of her agents in its construction, or the lack of proper care and attention in preserving the same, the petitioner does not bring his case within the rule. He does not charge that the breach is to be attributed to either of those causes, but says that he does not know whether it was occasioned by the force of the water, or whether the bank was torn down, as was suspected.

It will be seen by the above recited facts that there is no pretence of an existing liability on the part of the State to compensate the petitioner for any damage sustained by him in consequence of the aforesaid breach.

The only remaining question is, whether this case is one which ought to invoke the clemency of the Legislature in its favor.

This is doubtless a very hard case, but it is a misfortune against which the exercise of ordinary prudence would, in a great measure, have protected him. The facilities for insuring against accident, in our State, are so great that a failure to avail ourselves of those advantages manifests such a want of prudence on the part of those who neglect them, that their misfortunes fail to excite the same degree of sympathy to which they would be entitled under less favorable circumstances.

For the State to assume the responsibilities of an underwriter, for all those who might sustain any damage by means of her canals and other public works, and that too without even the compensation of the insurer's premium, would be as unwise and improvident in the management of her affairs as it would be unjust and burdensome to her citizens.

Such a policy would lead to the appropriation of the revenues of the State to purposes and objects entirely foreign to their legitimate end, and thus defer the payment of our State debt to an indefinite period.

Without a gross departure from what the committee believe to be the true policy of the State, remuneration cannot be made to this claimant. If similar claims have been allowed by former Legislatures the precedent imposes no obligations upon this General Assembly if it is believed to be wrong, but furnishes an additional reason for a speedy return to that true policy under which alone the State can hope to prosper.

In view of these considerations, the committee recommend the adoption of the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject, and that the petitioner have leave to withdraw his papers.

H. VINAL.

R E P O R T
OF THE
**STANDING COMMITTEE ON CLAIMS ON THE PETITION
OF WILLIAM GREENE.**

IN SENATE—March 10, 1849.

The standing committee on Claims, to whom was referred the petition of William Greene, praying for the refunding of certain tolls paid by him on the Ohio Canal, have had the same under consideration and

REPORT:

That they have examined this claim, and the testimony submitted to substantiate the same, and find that it differs but little in principle from the numerous claims presented against the State for damages sustained upon her canals and other public works.

The facts of the case, as appears by the testimony, are these:

William Greene, the petitioner, as owner and master of the canal boat Mexico, took out a clearance at Portsmouth for a cargo of merchandise shipped for Chillicothe, for which he paid one hundred and twenty-five dollars and seventy-six cents; that on his way to the latter port, and before his freight was earned, the boat struck a log in the canal and sunk, and that the boat and cargo were an entire loss.

It is urged that this claim differs from those which have been presented asking the State to pay for goods lost or damaged on her canals, in this, that they ask the State to pay nothing out, but merely to refund a particular sum paid her by the claimant, the consideration for which failed. The force of this reasoning is not perceived. If the State performed her part of the contract, to wit, to give the boat and cargo a clearance from Portsmouth to Chillicothe, the fact that the boat and cargo were prevented by accident from reaching her place of destination, and that the tolls paid were lost because the boat had not earned her freight, furnishes no argument for setting aside the contract and refunding the money paid. Nor does it alter the case that this accident grew out of the dangers of navigation, for the perils of the canal enter into and form a part of the contract.

This claim was presented to the Board of Claims, in March last, for allowance. That board, after examining the case, made the following decision:

“It appears that this claim does not fall within the class of cases provided for the refunding of tolls, as established by the Board of Public Works. See page 46 of the printed orders, rules, &c.

“This board does not consider itself at liberty to change, modify, or enlarge the rules so established, and do therefore refuse to allow the claim; especially in view of the act of the General Assembly, passed Feb. 22, 1848, in relation to damages sustained on the public works to property or boats navigating the same.”

It appears by the above decision that the Board of Claims, with a full knowledge of all the facts before them, could not allow this claim, without extending the rules established by the Board of Public Works, and at the same time violating what they believed to be the spirit and intention of the act above referred to.

The committee are of the opinion that the Board of Claims put the proper construction upon that statute. One of the established rules for ascertaining the meaning of a statute, and arriving at the intention of the Legislature in passing it, is to find out the mischief intended to be remedied.

Adopting this rule, there can be no doubt as to the proper construction of this law.

Claims were continually being presented against the State for damages sustained upon her public works in numerous ways, each differing from the other in some particular, rendering it very difficult to establish any general rule applicable to all.

To remedy this growing evil, which, if permitted longer to exist, would have become burdensome to the treasury, the act of Feb. 22d, 1848, was passed.

Believing this to be a wholesome law, the committee are unwilling to recommend its repeal, or the adoption of any course which would have a tendency to weaken its force or effect. They therefore offer for adoption the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject, and that the petitioner have leave to withdraw his papers.

H. VINAL.

REPORT

OF THE

STANDING COMMITTEE ON CLAIMS ON THE CLAIM OF DEDRICK HENDERS.

IN SENATE—March 12, 1849.

The standing committee on Claims, to whom was referred the claim of Dedrick Henders, for \$1,300, which he alleges was improperly paid by the agents of the State to William Kent, when it ought to have been paid to Henders & Prishoff, sub-contractors for the construction of section 57 of the Miami Extension Canal,

REPORT:

That they have examined the papers submitted, and find the following to be the facts in the case:

William Kent & Brothers were contractors upon section No. 57, Miami Extension Canal.

On the 20th of November, 1839, these contractors subcontracted this section to Dedrick Henders and Henry Prishoff, and made the following assignment of their contract with the State to said Henders & Prishoff, to wit:

“We hereby agree to give to Henry Prishoff and Dedrick Henders, all our right, title, and interest to section No. 57, Extension Miami Canal, north of Dayton, at the following prices, viz: Earth excavation, fourteen cents per cubic yard; earth embankment, fourteen cents per cubic yard; and all other work which may be attached to said section and not included in the contract between William Kent and Brothers and the State of Ohio, to receive such price as may be estimated by the engineer having charge of said work. Said Henry Prishoff and Dedrick Henders to draw all money that may be from time to time estimated on said section.”

“WM. KENT.”

Some time after the agreement was entered into, and the above assignment was made, Henders was told that this assignment would not give him a right to draw the money directly from the State agents. He then called on the Kents for a power of attorney to enable him to obtain the checks and receipt for them in their name. The Kents at first objected, but after extorting from this poor German an additional

sum of seventy-five dollars, over and above what he had already paid for the contract, they gave him the following power of attorney:

"We, William Kent & Brothers, canal contractors on section 57 of the Miami Canal Extension, north of Piqua, do hereby authorize, appoint, and empower Dedrick Henders, of St. Marys, to draw from the proper officers of the State of Ohio the amount of all estimates of said section, and retain all moneys that may be owing the said Dedrick Henders; and the said Dedrick Henders is hereby authorized to sign the receipts, and indorse the checks paid by the canal commissioners or engineer, for labor and materials on said section, until said section is completed; and the said commissioners and engineer are hereby authorized to issue and deliver to said Dedrick Henders said certificates and checks at said estimate, or so soon as issued.

"Given under my hand and seal.

"Signed:

WM. KENT, for

"WM. KENT & Bros."

In order that the agents of the State might be fully apprised of the whole transaction, Mr. Henders placed this power of attorney in the hands of Mr. Barney, the chief engineer on that work. Under this arrangement Mr. Henders drew the first estimate made after he took the contract. Having thus, as he supposed, fully tested the efficacy of his power of attorney, he doubtless felt secure as he would have been had either Kent or Mr. Barney been an honest man.

He was therefore in no hurry to present himself to the commissioner at the time of the second payment, to which he was entitled, and did not, until late in the day, or perhaps not until the second day. When he did present himself he was told that he was too late; that William Kent had drawn his money and had left the ground. He had in fact absconded beyond the reach of Henders, and it is understood that some time after he died insolvent.

This Mr. E. G. Barney, the resident engineer, whom it is strongly suspected shared with William Kent the profits of that nefarious transaction, gives the following statement in reference to the payment of the estimate above referred to:

"This will certify that William Kent, a contractor on sections 57 and 58, Extension Miami Canal, drew, at the payment in March last, a check on the Treasurer of State for one thousand three hundred dollars, for work done on sec. 57 by Dedrick Henders, a sub-contractor under said Kent. Said check was drawn by Kent in trust for said Henders, which trust has not been fulfilled."

Mr. Barney shows no authority creating any such trust, nor does he alledge there was any.

This was evidently an after thought seized upon in order to frame some plausible excuse for this wanton and known misapplication of the hard earnings of this honest and unsuspecting man.

This claim, it appears, was submitted to the Board of Claims, consisting of the Board of Public Works and the Attorney General, who

examined it and made the following record of their decision in the case :

"The case is one of great hardship, but the board do not see that there is any claim upon the State for the repayment of this money. The only contract into which the State had entered was with Kent & Brothers. The sub-contract, or the assignment of the contract, was not in any way recognized by the State, but was altogether a matter between the other parties, which in no respect, so far as the State was concerned, changed its relations with the original contractors. The State continued to look to these contractors alone for the performance of the contract, and consequently as alone entitled to payment of estimates. The authority given by Kent & Brothers could only be regarded as a power of attorney to act for them and sign their name in receiving the money payable on estimates, and not as an assignment of the contract. The universal practice has been to require the receipt of the contractor for estimates whenever he is present, and never to recognize an assignee of the contract as such. When the contractor is not present payments are made to his attorney as the person authorized to act for him and sign his name to the proper vouchers."

"When, therefore, the original contractors, Kent & Brothers, in March, 1842, came in person and demanded payment of the estimates made in their name, and under their contract, the power was instantly revoked, and the payment made to the only party which the State could recognize as entitled to it."

The facts and arguments set forth in the foregoing statement are undoubtedly correct, and your committee fully agree with the Board of claims in their decision. The board admit the case is one of great hardship. Your committee believe it to be one demanding the liberal consideration of the General Assembly.

The claimant is a German, and was, at the time of entering into this contract with Kent & Brothers, wholly unacquainted with the rules of the Board of Public Works, and naturally supposed that a power of attorney from them, and that placed in the hands of the resident engineer, would protect him against fraud by either of the Kents.

All the papers in the case show conclusively that the agents of the State were fully aware of the existing contract between Henders and the Kents, that the latter had no interest whatever in the job, and that Henders was actually doing the work.

The remark of the Board of Claims, "that the money was paid to the only party which the State could recognize as entitled to it," (the original contractor, he having demanded it,) is unquestionably true as a legal proposition; but, as a matter of practice under the circumstances of this case, it loses much of its force, for it is hardly to be supposed that Mr. Kent would have been very imperious in his demands upon the resident engineer, for money to which this same engineer knew he had no right or title. The excuse presented by the resident engineer, for his conduct on that occasion, is but a miserable pretence, intended to cover up the bold rascality of that transaction.

The question presented to this Legislature, then, is not one of legal right, but a question of conscience.

Will the State suffer this innocent man, who is even now struggling to pay off the debts contracted by him in the prosecution of that work, to lose the whole amount, while she is enjoying the fruits of his hard labor, merely because she is not legally bound to remunerate him?

In conclusion, then, your committee would say, that while they are free to admit that this claimant has no legal claim on the State, and while they also see many objections to granting relief in this class of cases, they still feel constrained to regard this case as one of peculiar hardship, presenting unusual features, and, as your committee believe, not likely to form a precedent for allowing any other claims.

They therefore offer for adoption the following joint resolution:

Resolved, by the General Assembly of the State of Ohio, That the Acting Commissioner of Public Works, on the Miami Extension Canal, be and he is hereby authorized to issue his check on the Treasurer of State, in favor of Dedrick Henders, for the sum of thirteen hundred dollars, to be paid out of the General Canal Fund, in the same manner and under the same provisions now governing payments on the canals of this State, except that the certificate of the Resident Engineer may be dispensed with.

All of which is respectfully submitted.

H. VINAL,
SABIRT SCOTT.

REPORT

OF THE

STANDING COMMITTEE ON CLAIMS ON THE PETITION WM, W. CECIL.

The standing committee on Claims, to whom was referred the petition of William W. Cecil, of Shelby county, asking for an assessment and payment of damages occasioned by the "Miami Canal," have had the subject under consideration and

REPORT:

That this is a claim of long standing. The petitioner sets forth that he owns a farm in Shelby county; that in the year 1837 the State located the Miami Canal extension through his land, rendering a small portion, about six acres of his land, too wet for cultivation, and subjecting him to the expense of erecting a bridge across said canal, in order to keep up a communication between the different portions of his farm.

It appears by an award made in 1842, by the board of appraisers, (a copy of which is herewith submitted,) that no damage was sustained by the petitioner over and above the benefits and advantages received by him from the construction of said canal; a judgment which the committee are disposed to believe very nearly correct, as the petitioner complains of having to pay tax on this wet land at an appraisment of \$20 per acre.

Last year this claim was again brought forward and presented to the Board of Claims.

The committee find upon the books of that board the following entry:

"It appears from the book of awards, that a view was had of these premises by the board of appraisers, who, on the 22d of December, 1842, made their award that Mr. Cecil had sustained no damage over and above the benefits received by him from the construction of said canal. No new matter has been submitted to this board, and we therefore decide against the present claim."

The committee would here remark, that the only additional evidence now submitted are three affidavits, one his own, which states that he would pay five hundred dollars (if he had it,) if the canal had never touched his farm.

There is another, signed by E. Adams, Hiram Wilson, and John Davis, who say, that upon actual view, they consider the damage done to Mr. Cecil's farm to be five hundred and fifty dollars.

The remaining affidavit is signed by James M. McKnight. He states, that upon actual view, he thinks the damage done to Mr. Cecil's farm to be equivalent to one thousand dollars.

It will be observed that these affidavits differ materially from each other in their estimate of damages upon actual view of the premises, and that neither of them appear to have taken into consideration resulting benefits as a set off to the damage sustained.

The committee are therefore of opinion that the testimony submitted does not make out a case to entitle the petitioner to a reappraisement. The committee offer for adoption the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject, and that the petitioner have leave to withdraw his papers.

H. VINAL.

Award of William W. Cecil—1842.

BOARD OF APPRAISERS.

The said appraisers do award, adjudge, and determine, that William W. Cecil, of the county of Shelby, in the State of Ohio, by appropriation as aforesaid, by the commissioners of the Board of Public Works of the State of Ohio, or their agents, of that part of a tract of land containing one hundred and sixty acres, more or less, being the southwest quarter of section number seventeen, in township number seven, in range six, east of the meridian, in the said county of Shelby, belonging to said William W. Cecil, occupied by, and included between, the banks of said Miami Canal Extension, and in consequence of ground to be overflowed in consequence of the construction of said canal, has sustained and will sustain *no damage*, over and above the benefit and advantage received, and to be received by him, from the said canal.

Award of Board of Claims—1848.

This claim is for damages sustained in the construction of the Miami Extension Canal through the farm of the applicant.

It appears from the book of awards, that a view was had of these premises by the Board of Appraisers, who, on the 22d December, 1842, made their award that Mr. Cecil had sustained no damage over and above the benefit received by him from the construction of the canal. No new matter has been submitted to this Board, and we therefore decide against the present claim.

RECEIPTS

OF THE

SECRETARY OF STATE FOR ENROLLED BILLS AND
RESOLUTIONS.

[No. 1.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Jan. 27th, 1849.

Received of the Enrolling committee of the Senate and House of
Representatives the following enrolled joint resolution :

Resolution relative to claim of George Riordan.

SAML. GALLOWAY,
Secretary of State.

[No. 2.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 2, 1849.

Received of the committee on Enrollment of the Senate and House
of Representatives the following enrolled act and joint resolutions :

An act to amend an act entitled "an act prescribing the times of
holding the court of common pleas in the twelfth judicial circuit,"
passed February 2, 1848.

Resolution relative to postage of members, clerks and sergeants-at-
arms of the General Assembly.

Resolution relative to claim of N. A. Hanna & Co.

SAML. GALLOWAY,
Secretary of State.

By JOHN J. JANSSEN, *Clerk.*

[No. 3.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 9, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills and joint resolution :

An act to amend an act entitled "an act prescribing the times of holding the court of common pleas in the third judicial circuit."

An act to incorporate the Evangelical Lutheran St. John Congregation of Springfield, Clark county, Ohio.

An act to incorporate the Rossville and Millville turnpike road company.

An act to incorporate the trustees of the Ohio Institute of Natural Science.

Resolution relative to the postage law.

SAML. GALLOWAY,
Secretary of State.

[No. 4.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 21, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills and joint resolutions :

H. No. 2; An act to incorporate the Judson College at Jefferson, in the county of Harrison.

H. No. 3; An act to amend an act passed January 28, 1848, entitled "an act to incorporate the Lorain Plank Road company."

H. No. 4; An act to incorporate the Madison and Fayette Turnpike company.

H. No. 13; An act to incorporate the Ashtabula Central Plank Road company.

H. No. 19; An act to extend the corporate limits of the town of Germantown.

H. No. 39; An act to incorporate the London, Somerford and Mechanicsburg turnpike company;

H. No. 43; An act to regulate the levying of a tax for road purposes, in the counties of Belmont and Jefferson.

H. No. 52; An act to authorize the establishment of separate schools for the education of colored children, and for other purposes.

H. No. 104; An act to fix permanently the times of holding the courts of common pleas in the second judicial circuit.

H. No. 155; An act to fix the times of holding the court of common pleas in the tenth judicial circuit.

An act to organize school district number seven, Liberty township, Clinton county.

An act to incorporate the Hamilton, Rossville, Milleville and Scipio Turnpike Road company.

An act fixing the time of holding the court of common pleas in the seventh judicial circuit.

An act to incorporate the Springfield and Columbus Railroad company.

An act for the relief of John Devine, James M. Snyder and William Sharp.

An act to amend an act entitled an act for the support and better regulation of common schools in the city of Columbus, passed February 3, 1845.

An act to incorporate the Norwalk Plank Road company.

Joint resolution admitting Louisa Sheldon as State patient into the Lunatic Asylum.

Senate joint resolution relative to inviting General Taylor to visit Columbus.

Senate joint resolution relative to school lands.

Senate joint resolution relative to retaining Mr. Lois Beach in the Lunatic Assylum.

SAML. GALLOWAY,
Secretary of State.

[No. 5.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 24, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills and joint resolutions:

H. No. 7; To establish a free turnpike road from Springboro' to Ridgeville, in Warren county.

H. No. 15; To authorize the sale of school section sixteen in Richland township, Wyandot county.

H. No. 16; To authorize the sale of school section sixteen in Salem township, Wyandot county, O.

H. No. 18; To provide for the sale of the northwest quarter of section sixteen of the original survey of township 9, range 4, in the Stenbenville district, now in Greene township, Harrison county.

H. No. 25; To amend an act to incorporate the Farmer's Mutual Fire Insurance company of Medina county.

H. No. 34; To incorporate the Locust Street Warf company, of Gallipolis.

H. No. 37; To amend the act to encourage the organization of Fire companies, and to repeal former acts, passed February 8, 1847.

H. No. 42; To repeal an act entitled an act prescribing the duties of Supervisors, and relating to roads and highways, passed January 15, 1845.

H. No. 46; To appoint commissioners to lay out and establish a State road in the counties of Meigs, Gallia and Jackson.

H. No. 48; To authorize the sale of section sixteen in Harrison township, Gallia county.

H. No. 50; To authorize the Commissioners of Van Wert county to borrow money for certain purposes.

H. No. 56; To repeal the "act to provide for registering the names of electors, and to prevent frauds at elections," passed March 13, 1845.

H. No. 70; To incorporate the "Relief Fire company" of the city of Chillicothe.

H. No. 73; To incorporate the town of Youngstown in the county of Mahoning.

H. No. 83; To authorize the Trustees of Portland township, Erie county, to borrow \$20,000 for the improvement of the Sandusky Harbor.

H. No. 84; To amend an act passed February 4, 1836, entitled an act to incorporate the town of Jefferson in the county of Ashtabula.

H. No. 90; To amend the act incorporating the town of Steubenville.

H. No. 96; To revive and continue in force the provisions of an act entitled an act to amend an act to incorporate the Portsmouth Dry Dock and Steamboat Basin company, passed February 14, 1846.

H. No. 111; Prescribing the times of holding court of common pleas in the thirteenth judicial circuit.

H. No. 136; To incorporate the Oxford Female Institute at the town of Oxford, in the county of Butler.

H. No. 151; To incorporate the Cincinnati Medical Institute.

H. No. 170; To fix the times of holding the court of common pleas in the fifteenth Judicial circuit.

Resolution relative to furnishing the Directors of Penitentiary with books.

SAMUEL GALLOWAY,
Secretary of State.

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 24, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled acts :

S. No. 19; An act to incorporate the Perrysburg and Findlay Plank Road company.

S. No. 117; An act to provide for the sale of Western Reserve school lands.

S. No. 129; An act to lay out and establish a State road in the counties of Guernsey and Coshocton.

H. No. 51; An act to incorporate the Otterbein University of Ohio.

H. No. 68; An act to incorporate the Waynesville and Sugar Creek turnpike company.

H. No. 75; An act to incorporate the Sandusky City and Castalia Plank Road company.

H. No. 81; An act to incorporate the Savannah Toll Bridge company, in the county of Athens.

H. No. 82; An act to authorize the sale of school section sixteen in Pleasant township, Hancock county.

H. No. 88; An act to incorporate the Farmington Normal school, in the county of Trumbull.

H. No. 91; An act to authorize the sale of the school lands of Venice township, Seneca county, Ohio.

H. No. 94; An act to incorporate the Hooking county Savings Institute at Logan.

H. No. 100; An act to lay out and establish a State road in the counties of Washington and Athens.

H. No. 109; An act to provide for the sale of school section sixteen, in the township of Blanchard, county of Hardin, O.

H. No. 115; An act to authorize the sale of school lands belonging to Tymochtee township, Wyandot county.

H. No. 137; An act for the support and regulation of common schools in district No. 4, in Washington township, Preble county, in this State.

H. No. 139; An act to regulate a certain school district in the township of Orwell, Ashtabula county.

H. No. 144; An act to authorize the sale of school section sixteen, Plain township, Wood county.

H. No. 145; An act to extend the charter of the Perrysburg Canal and Hydraulic company.

H. No. 160; An act to amend an act entitled "an act to encourage Teachers' Institutes," passed February 8, 1847.

H. No. 161; An act to incorporate the Franklin and Germantown Turnpike Road company.

H. No. 167; An act to incorporate the town of Rock Creek, in the county of Ashtabula.

H. No. 200; An act to amend the act entitled the "act to incorporate the Tiffin and Findlay Plank Road company," passed February 24, 1848.

SAML. GALLOWAY,
Secretary of State.

[No. 7.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 24, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled acts and joint resolutions:

S. No. 11; To incorporate the Springfield Female Seminary in the county of Clark.

S. No. 21; To authorize the trustees of Springfield township to subscribe money for the erection of a town hall.

S. No. 27; To incorporate the Lake and Trumbull Plank Road Company.

S. No. 33; To authorize the trustees of townships in the county of Brown to levy an additional road tax.

S. No. 84; To lay out and establish a free turnpike road from Newton, in Union county, to the west line of Delaware county.

S. No. 180; Relating to the sale of bonds of the Columbus and Xenia Railroad Company, and of the Cleveland, Columbus and Cincinnati Railroad Company.

Resolution relative to admitting Mrs. Isabella Johnston into the Ohio Lunatic Asylum.

SAM'L GALLOWAY,
Secretary of State.

[No 8.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 27, 1849

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills:

H. No. 58 ; To amend "an act to incorporate the town of Franklin, in the county of Warren, and to repeal all laws heretofore enacted on that subject," passed February 8, 1848.

H. No. 95 ; To authorize the sale of school lands belonging to Union township, (fractional) Champaign county.

H. No. 103 ; To incorporate the Northern Fire Company of Cincinnati.

H. No. 248 ; To authorize the commissioners of Marion county to subscribe stock in railroad companies.

SAM'L GALLOWAY,
Secretary of State.

[No. 9.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., Feb. 28, 1849.

Received from the committee on Enrollment of the Senate and House of Representatives the following enrolled bills :

H. No. 64 ; To incorporate the Minster Fire Insurance Association.

H. No. 107 ; To extend the Monroeville Plank Road Company to the town of Elyria, in Lorain county.

H. No. 117 ; To amend the act to incorporate the Great Western Railroad Company.

H. No. 121 ; To incorporate the Little Miami Bridge Company.

H. No. 152 ; To amend an act passed February 8, 1847, entitled "an act accepting the charter and franchises of the First Range Turnpike Company, in Ashtabula county, and declaring said road a free turnpike road."

H. No. 162 ; To incorporate the Mount Washington College in Hamilton county, Ohio."

H. No. 259 ; Granting to the trustees and principal teachers of Greenfield Seminary, in Highland county, authority to confer degrees and testimonials of attainments.

SAM'L GALLOWAY,
Secretary of State.

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 2, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills:

H. No. 32 ; To incorporate the Lower Sandusky Plank Road Company.

H. No. 53 ; To provide for the punishment of an offence therein named.

H. No. 66 ; To incorporate the Oxford, Western and Connersville Turnpike Road Company.

H. No. 67 ; To incorporate the town of Flushing, Belmont county.

H. No. 69 ; To authorize the trustees of Portland township, Erie county, to borrow twenty thousand dollars and subscribe the same as stock in plank roads.

H. No. 76 ; To incorporate the Lake Erie and Milan Plank Road Company.

H. No. 108 ; To further amend the act entitled "an act to regulate the practice of the judicial courts."

H. No. 114 ; To incorporate the town of St. Clairsville, in Belmont county.

H. No. 125 ; To amend the act entitled an act to incorporate the New Baltimore and New Haven Turnpike and Bridge Company, passed February 8, 1847.

H. No. 132 ; To authorize county commissioners to allow guard fees in certain cases.

H. No. 138 ; To incorporate the Lewisburgh and Liberty Corner Turnpike Road Company.

H. No. 147 ; To amend the act entitled "an act prescribing the times of holding the court of common pleas in the fourteenth judicial circuit, and for other purposes," passed February 2, 1848.

H. No. 148 ; To incorporate the Columbus, Piqua and Indiana Railroad Company.

H. No. 154 ; To repeal the act establishing a turnpike gate in the town of Fulton, &c.

H. No. 165 ; To divide the town of St. Clairsville, Belmont county, into two school districts.

H. No. 184 ; In relation to the Urbana, Troy and Greenville Turnpike Road Company.

H. No. 186 ; To incorporate the London and Lafayette Turnpike Company.

H. No. 187 ; For the relief of Amelius Heyden and William M. Folger.

H. No. 223 ; To lay out and establish the West Elkton free turnpike road.

S. No. 183 ; To amend an act entitled an act to lay out and establish a graded State road in the counties of Meigs, Gallia and Jackson, passed January 28, 1848.

SAM'L GALLOWAY,
Secretary of State.

[No. 11.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 7, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills and joint resolutions :

H. No. 23 ; To authorize the administrator of William S. Tracy to complete real contracts.

H. No. 36 ; To incorporate the town of Malvern, in the county of Carroll.

H. No. 40 ; Prescribing the times of holding the court of common pleas in the sixteenth judicial circuit.

H. No. 47 ; To amend the act incorporating the Colerain, Oxford and Brookville Turnpike Company, passed February 13, 1832.

H. No. 93 ; To incorporate [the] Milford, Edenton and Woodville Turnpike Company.

H. No. 97 ; To amend the act entitled "an act to incorporate the town of Elyria."

H. No. 110 ; To incorporate the Columbia and New Richmond Turnpike and Bridge Company.

H. No. 112 ; To incorporate the Union Bridge and Cincinnati Turnpike Road Company.

H. No. 119 ; To incorporate the Bellbrook and Beaver Creek Turnpike Road Company.

H. No. 133 ; To amend the act entitled "an act to institute proceedings against corporations not possessing banking powers, and the visitorial powers of courts, and regulating corporations generally."

S. No. 14 ; In addition to an act in relation to incorporated religious societies, passed March 5, A. D. 1836.

S. No. 29 ; To amend the act to incorporate the Ross County Turnpike Company, passed February 19, 1848.

S. No. 30 ; To amend the charter of the Huron and Oxford Railroad Company.

S. No. 47 ; To establish a free turnpike road from Carrollton, in Montgomery county, by way of Farmersville, Dunkert Church and Deniston's Mills, to Eaton, in Preble county.

S. No. 48 ; To incorporate the Mansfield Fire Company No. 1.

S. No. 49 ; To amend an act entitled an act to incorporate the Belle-

fontaine and Indiana Railroad Company, passed February 25, 1848.

S. No. 51 ; For the better regulation of the public schools in cities, towns, &c.

S. No. 55 ; To establish a free turnpike road from Sugar Valley to Camden, in Preble county.

S. No. 57 ; Making Ophelia Piper the legal heir of Zadock Tittitson [Tillitson] of Medina county, and changing the name of said Ophelia Piper to Caroline Tillitson.

S. No. 61 ; Incorporating the Scioto Valley Railroad Company.

S. No. 63 ; To establish a free turnpike road from Eaton, in Preble county, by way of West Florence, and thence west on the Boston State road to the Indiana State line.

S. No. 77 ; To authorize the sale of school section 16, in Monroe Township, Preble county.

S. No. 85 ; Further to amend the act entitled an act to provide for the internal improvement of the State of Ohio by navigable canals.

S. No. 86 ; Authorizing the personal representative of Matthew J. Gilbert, late of Franklin county, deceased, to complete the contracts said Gilbert made in his lifetime relative to real estate and for other purposes.

S. No. 93 ; To change the name of Elizabeth A. Degraw.

S. No. 95 ; To amend an act entitled an act to incorporate the Fireman's Insurance Company of Cincinnati, passed January 9, 1832.

S. No. 103 ; To incorporate the Miller Academy.

S. No. 121 ; To amend an act entitled an act to incorporate the Dayton, Lebanon and Deerfield Railroad Company, passed February 6, 1847, and an act amendatory thereto, passed February 14, 1848.

S. No. 132 ; To incorporate the Conneaut and Youngstown Plank Road Company.

S. No. 190 ; To extend certain streets in the town of Springfield, Clark county.

S. No. 214 ; To incorporate the town of Haysville, in Ashland county.

Joint resolution ; Appointing Herman B. Mayo a trustee of Miami University.

SAM'L GALLOWAY,
Secretary of State.

[No. 12.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 8, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives the following enrolled bills :

H. No. 80 ; To incorporate the town of Wapaukonnetta, in the county of Auglaize.

H. No. 92 ; To amend the act entitled an act further to amend the act entitled an act to incorporate the town of Painesville, passed February 8, 1847.

H. No. 166 ; To authorize the sale of a part of school section 16, in Smithfield township, Jefferson county.

H. No. 173 ; To authorize the sale of the south half of school section twenty-four, granted to Washington township, now in Morrow county.

H. No. 174 ; To amend an act entitled an act to incorporate the Dayton and Xenia Turnpike Road Company, passed February 28, 1845.

H. No. 176 ; To amend the act to incorporate the city of Sandusky, in Erie county, and for other purposes, passed March 6, 1845.

H. No. 177 ; To incorporate the Walnut street Baptist Church of Cincinnati.

H. No. 181 ; To repeal part of the act entitled an act to lay out and establish a free turnpike road from Delaware, in Delaware county, to Kenton, in Hardin county, passed February 8, 1848.

H. No. 185 ; To incorporate the Dayton, Xenia and Water Vliet Valley Turnpike Company.

H. No. 211 ; To lay out establish a free turnpike road from the Middletown and West Alexandrian turnpike to the West Elkton turnpike.

H. No. 217 ; To authorize the sale of section 16, Madison township, Williams county.

H. No. 221 ; To incorporate the German Evangelical Lutheran and German Reformed United Protestant Congregation of Seneca township, Seneca county, Ohio.

H. No. 226 ; To incorporate the Sharon Railroad Company.

SAM'L GALLOWAY,
Secretary of State.

[No. 13.]

SECRETARY OF STATE'S OFFICE,
COLUMBUS, O., March 10, 1849.

Received of the committee on Enrollment of the Senate and House of Representatives, the following enrolled bills and joint resolutions:

H. No. 35. To incorporate the Saving Fund Society of Woodfield.

H. No. 61. For the relief of John D. Burrill.

H. No. 65. To repeal the charter of the Harmer and Lancaster Turnpike Company, passed March 13th, 1838.

H. No. 140. To extend the time of payment for School Section Sixteen in Springfield township, Lucas county.

H. No. 150. To impose an additional tax for the improvement of the Maumee and Angola Road.

H. No. 286. To authorize Ashbel Chittenden to surrender the lease for, and become the purchaser of the East half of the South West quarter of School Section sixteen, in Scipio township, Seneca county, Ohio.

S. No. 40. To incorporate the city Insurance Company of Cincinnati.

S. No. 65. For the relief of the Harrison, New Trenton, Rochester and Brookville Turnpike Company.

S. No. 79. To amend the act to incorporate the Eclectic Medical Institute of Cincinnati, passed March 10, 1845.

S. No. 81. To authorize the city council of the city of Cincinnati to borrow two hundred thousand dollars.

S. No. 82. To amend an act entitled an act to establish a free turnpike road from Marysville in Union county, to Kenton in Hardin county.

S. No. 90. To incorporate the St. Mary's and Willshire Plank Road Company.

S. No. 91. Supplementary to the act entitled an act to incorporate the Troy and Newton Turnpike company.

S. No. 100. To amend the act to incorporate the Central Ohio Railroad Company.

S. No. 119. To authorize the sale of section sixteen in Liberty township, Seneca county.

S. No. 208. To amend the act entitled an act to fix permanently the times of holding the courts of common pleas in the second Judicial circuit, passed Feb. —, 1849.

Resolution relative to giving authority to keep up a dam across the Great Miami River, in Miami county.

SAM'L GALLOWAY,
Secretary of State.

[No. 14.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March, 1849.

Received of the Committee on Enrollment of the Senate and House of Representatives, the following enrolled bills :

S. No. 23 ; To amend the act entitled an act to incorporate the Toledo Plank Road Company, passed January 28, 1848.

S. No. 54 ; For the better support of Common Schools, in Perrysburg, Wood county.

S. No. 59 ; To authorize the sale of North West quarter section No. 32, town 8, North Range 12 East, in the county of Wood.

S. No. 89 ; To incorporate the St. Mary's and Wapakoneta Plank Road Company.

S. No. 94 ; To amend an act entitled an act to incorporate the Cincinnati Insurance Company, passed February 7, 1829.

S. No. 97 ; To amend an act entitled an act to incorporate the Manufacturer's Insurance Company of Cincinnati, passed March 15th, 1838.

S. No. 99 ; To incorporate the Zanesville Gas Light Company.

S. No. 106 ; To authorize the directors of school district, No. 13, in Jefferson township, Fayette county Ohio, to sell and convey certain real estate.

S. No. 120 ; To authorize the city council of Columbus to occupy a part of a certain street and alley, therein mentioned, for a market house.

S. No. 122 ; In relation to taxes, schools and sewers in the city of Toledo.

S. No. 138 ; To authorize the sale of certain school lands therein named.

S. No. 151 ; To incorporate the Cleveland and Willoughby Plank Road Company.

S. No. 186 ; To incorporate the Delaware, Marysville, Milford, Mechanicsburg and Springfield Railroad Company.

S. No. 192 ; To incorporate the Springfield Gas Light and Coke Company.

S. No. 257 ; Amendatory of the act prescribing the times of holding the Court of Common Pleas in the Fourteenth Judicial Circuit.

S. No. 118 ; To revive the fourth section of a certain act therein named.

H. No. 351 ; To authorize the Commissioners of Stark county to subscribe stock in the Ohio and Pennsylvania Railroad Company.

S. No. 92 ; Further to amend the act entitled an act to incorporate the Toledo, Sandusky and Michigan City Railroad Company and the several acts amendatory thereto.

S. No. 111 ; Further to amend the act incorporating the city of Cincinnati, passed March 1st, 1834.

S. No. 146 ; To incorporate the town of New Fort Ball in the county of Seneca.

S. No. 158 ; To establish a land office at Defiance.

S. No. 162 ; Further to amend the act incorporating the Wayne, Medina and Cuyahoga Turnpike company.

S. No. 178 ; Further to amend an act regulating railroad companies, passed Feb. 11, 1848, and for other purposes.

S. No. 189 ; To legalize a change in the town plat of Winchester, in Fairfield county ; and to confirm the conveyances made by Reuben Dove, proprietor of Doves' addition to said town of Winchester, of the North half of lots Nos. 17 and 18, to Jacob Ruse and others.

S. No. 198 ; To amend the act entitled an act to incorporate the Belefontaine and Indiana Railroad Company, passed February 22, 1848.

S. No. 194 ; To amend the act entitled an act to incorporate the Milleville, Reily and Milton Turnpike Company.

S. No. 200 ; To extend the corporate limits of the town of Medina, in the county of Medina.

S. No. 202 ; To authorize the town council of the town of Warren, Trumbull county, to assess and collect an additional tax for fire purposes.

S. No. 207 ; To establish a free turnpike road from New Paris to New Westerville, in Preble county.

S. No. 216 ; To incorporate the town of St. Marys, in Auglaize county, and to repeal certain acts.

S. No. 222 ; To incorporate the Bellevue, Monroeville, Norwalk and Birmingham Plank Road Company.

H. No. 205 ; To incorporate the Troy, Stanton and Loss Creek Turnpike Road Company.

H. No. 207 ; To authorize the trustees of upper township, Lawrence county, to levy taxes for certain purposes.

H. No. 213 ; To amend an act entitled an act for the support and better regulation of common schools, and to create permanently the office of superintendent, passed March 7, 1838.

H. No. 235 ; To incorporate the Dry Ridge Universalist Society of Greene township, Hamilton county.

H. No. 250 ; To lay out and establish a state road from Liberty township, in Putnam county, to the Van Buren, Independence and Ridgeville Free Turnpike Road in Henry county.

H. No. 274 ; To incorporate the Elizabethtown and Clevestown Turnpike Company.

H. No. 275 ; To extend the corporate limits of the town of Mount Gilead, Morrow county, in this state.

H. No. 281 ; To incorporate the town of Canfield, in the county of Mahoning.

H. No. 287 ; To extend the time of payment of the purchase money of Sec. 16, township No. 3, of the United States Reserve, of twelve miles square, in Lucas county.

H. No. 290 ; To incorporate the Greene and Millcreek Township Turnpike Company.

H. No. 305 ; To lay out and establish a state road in the counties of Jackson, Athens and Gallia.

H. No. 307 ; To attach sections one and two, in Bloomfield township, Richland county, to Sandusky township in said county.

Resolution relative to paying William Dennison, Jr., the sum of \$115 44.

Resolution relative to investigating the Miami Univerity.

SAM'L GALLOWAY,
Secretary of State.

[No. 15.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 13, 1849.

Received of the Committee on enrollment of the Senate and House of Representatives, the following enrolled bills :

S. No. 72 ; To provide for taxing certain lands sold by the United States.

S. No. 109 ; To lay out and establish a graded state road in the counties of Washington and Morgan.

S. No. 114 ; Granting the right of way to the Junction Railroad Company, and extending its privileges.

S. No. 123 ; To incorporate the trustees of the Pomeroy Academy.

S. No. 155 ; To incorporate the Liberty township Turnpike Company.

S. No. 173 ; To incorporate the Columbus Art Union.

S. No. 182 ; To incorporate the Ohio Education Society of the Evangelical Lutheran Church.

S. No. 213 ; To incorporate certain towns therein named.

S. No. 16 ; To provide for the sale of section sixteen, in Carryall township, Paulding county.

S. No. 42 ; To repeal the act entitled an act to authorize the town of Hamilton to borrow money, and for other purposes.

S. No. 66 ; To provide for the sale of certain school lands therein named, situated in Washington township, Miami county.

S. No. 75 ; To amend the act to incorporate the city of Cleveland, and the several acts amendatory thereto.

S. No. 96 ; To amend an act entitled an act to incorporate the Washington Insurance Company of Cincinnati, passed March 14th, 1836.

S. No. 137 ; To authorize the trustees of Perry township, in the county of Columbiana, to levy a tax to erect a town hall and market house in said township.

S. No. 168 ; To incorporate the Cadiz High school.

S. No. 197 ; To authorize the sale of school lands, belonging to Madison township, (fractional,) Clark county.

S. No. 204 ; To amend the act entitled an act fixing the times of holding the courts of common pleas in the eleventh judicial circuit, passed February 7, 1848.

H. No. 252 ; To confirm the charter of the Covington and Cincinnati Bridge Company, incorporated by an act of the General Assembly of Kentucky, passed February 17th, 1846, with certain limitations.

SAM'L GALLOWAY,
Secretary of State.

[No. 16.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 17, 1849.

Received of the Committee on Enrollment of the Senate and House of Representatives, the following enrolled bills and joint resolutions :

H. No. 12 ; To amend the act entitled an act to provide for the settlement of the estates of deceased persons, passed March 23d, 1840.

H. No. 79 ; To revive a certain act therein named.

H. No. 122 ; To authorize the Courts of Common Pleas to remit fines in certain cases.

H. No. 123 ; To amend the act passed March 5, 1842, entitled an act to regulate the mode of collecting debts against Turnpike Companies in which the State is a stockholder, and to authorize the companies to appropriate their portion of the tolls for the completion of the roads, and for other purposes, and the several acts amendatory thereto.

H. No. 156 ; For the relief of Nabby Wheeler.

H. No. 159 ; To incorporate the Maumee City Plank Road Company.

H. No. 169 ; To authorize the Governor, on behalf of the State of Ohio, to make a conveyance of certain lands, in Summit county, belonging to said state.

H. No. 178 ; Fixing the prices of printers for publishing the delinquent and forfeited lists.

H. No. 189 ; To incorporate the Four Mile Valley Railroad Company.

H. No. 195 ; To incorporate the Mad River and Miami Central Railroad Company.

H. No. 204 ; To incorporate the Miamisburg Western Free Turnpike Road.

H. No. 208 ; To amend the act to incorporate the Steubenville and Indiana Railroad Company, passed February 24, 1848.

H. No. 210 ; To amend an act entitled an act to incorporate the Franklin and Springboro' Turnpike Company in Warren county.

H. No. 220 ; To authorize the sale of school lands belonging to Pitt and Salem townships in Wyandot county.

H. No. 222 ; Repealing an act entitled an act incorporating the town of Benton in the county of Crawford.

H. No. 230 ; To extend the corporate limits of the town of Mount Sterling, in the county of Madison.

H. No. 236 ; To incorporate the Ripley and Locust Grove Turnpike Company.

H. No. 237 ; To incorporate the town of Palestine, in the county of Darke.

H. No. 239 ; To incorporate the Warren county Farmer's Mutual Fire Insurance Company.

H. No. 240; To incorporate the Trumbull, Portage and Geauga Plank Road Company.

H. No. 243; To amend an act passed February 24, 1848, entitled an act to amend the act entitled an act for the support and better regulation of Common Schools, and to create permanently the office of superintendent, passed March 7, 1838, and the acts amendatory thereto.

H. No. 249; To incorporate the Cincinnati, Batavia and Williamsburg Railroad Company.

H. No. 253; To incorporate the Darke county Medical Society.

H. No. 257; To authorize the sale of the Northwest quarter of school section one, in Buck township, Hardin county.

H. No. 261; To amend an act entitled an act to authorize the trustees of townships in certain counties to levy an additional road tax, passed February 22, 1848.

S. No. 269; To incorporate the Bentonville and New Market Turnpike Company.

H. No. 270; To authorize the sale of school land in Elizabeth township, of Lawrence county, in this State.

H. No. 288; To lay out and establish a free turnpike road from Defiance, in Defiance county, to the Indiana State line, at the point where the Fort Wayne Road now crosses said state line, in the county of Paulding.

H. No. 302; Prescribing the times of holding the Courts of Common Pleas in the eighth Judicial Circuit.

H. No. 309; To amend an act passed February 24, 1848, entitled an act to incorporate the Great Western Railroad Company.

H. No. 310; To incorporate the Martinsville and Bridgeport Free Plank Road Company, in Belmont county.

S. No. 87; To aid the Ohio and Mississippi Railroad Company.

S. No. 104; To authorize the Commissioners of Highland county, to subscribe to the capital stock of the Hillsborough and Cincinnati Railroad Company.

S. No. 113; Authorizing the city of Cleveland to subscribe to the capital stock of the Cleveland and Pittsburg Railroad Company, and for other purposes.

Resolution instructing the Senators and requesting the Representatives, from this state, in Congress, to procure the passage of a law reducing the price of the public lands.

Resolution requesting the Secretary of State to purchase and distribute four thousand copies of Curwen's Revising Index to the Statutes of Ohio.

Resolution requesting the Commissioners of the State House to report by what authority stone has been sold from the State quarry.

Resolution relative to the claims of H. S. Marion, and others.

Resolution relative to the claim of Augustus Moor.

SAM'L GALLOWAY,
Secretary of State.

[No. 17.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 20, 1849.

Received of the Committee on Enrollment of the Senate and House of Representatives, the following enrolled bills and joint resolution:

S. No. 38 ; To authorize the town council of the town of Sidney to subscribe to the capital stock of the Sidney and Wapakoneta Turnpike Road Company.

S. No. 60 ; To amend the act, incorporating the Cincinnati, Lebanon and Springfield Turnpike Company.

S. No. 80 ; To amend an act entitled an act to incorporate the town of Mansfield, in the county of Richland, and to repeal all acts now in force in relation thereto, passed March 13, 1843.

S. No. 105 ; To incorporate the Marion Hall Building Company of Mount Healthy, Hamilton county, Ohio.

S. No. 125 ; To amend an act entitled an act to incorporate the town of Sidney, passed March 1st, 1834.

S. No. 185 ; To amend the several acts relating to the Cincinnati, Hamilton, and Dayton Railroad Company.

S. No. 188 ; To authorize the town council of Newark to subscribe to the capital stock of the Newark Plank Road Company.

S. No. 212 ; In relation to the Miami Canal, the Miami extension, and the Wabash and Erie Canal.

S. No. 229 ; To incorporate the Eaton and New Madison Plank Road Company.

S. No. 234 ; To incorporate the Columbus Horticultural Society.

S. No. 235 ; To organize the county of Ashland a separate brigade.

S. No. 241 ; To extend the time of payment for the North West quarter of section sixteen, in Perry township, Monroe county.

H. No. 98 ; to authorize the trustees of the original surveyed township in Brown Township, Athens county, to lease to the original lessees or their assigns, section 29, in said township.

H. No. 188 ; To amend an act entitled an act to incorporate the towns of New Richmond and Susanna, in the county of Clermont, and the acts amendatory thereto.

H. No. 90 ; To amend the act entitled an act to incorporate the town of Xenia, in the county of Greene, passed February 9th, 1830, and for other purposes.

H. No. 229 ; To lay out and establish a state road in the counties of Jackson and Athens.

H. No. 232 ; To incorporate the Circleville, Darbyville and London Turnpike Road Company.

H. No. 254 ; Supplementary to an act entitled an act to incorporate the Washington Fire Engine Company of the town of Mt. Vernon, passed February 18th, 1840.

H. No. 255 ; To repeal an act entitled an act to lay out and establish a certain Free Turnpike therein named.

H. No. 284 ; To amend an act to establish a graded state road in the counties of Gallia, Meigs and Athens.

H. No. 285 ; To amend an act entitled an act to lay out and establish a graded state road in the counties of Gallia and Jackson.

H. No. 317 ; To extend the time of payment for school section sixteen, in Canton township, Stark county.

H. No. 327 ; To incorporate the London and Mt. Sterling Turnpike Company.

H. No. 271 ; To incorporate the Mahoning Plank Road Company.

H. No. 325 ; Making appropriations for the year 1849.

H. No. 346 ; To incorporate the Stillwater and Darke county Turnpike Company.

H. No. 359 ; To extend the time of payment to purchase of school section sixteen, in township four and range four, in Warren county.

Resolution relating to taking gravel from the old Penitentiary lot.

H. No. 263 ; To amend the act entitled an act to amend the act for levying taxes on all property in this State, according to its true value, passed March 2d, 1848, and for other purposes.

SAM'L GALLOWAY,
Secretary of State.

[No. 18.]

SECRETARY OF STATE'S OFFICE,
Columbus, March 31st, 1849.

Received of the Committee on Enrollment of the Senate and House of Representatives, the following enrolled bills and joint resolution:

S. No. 58; To incorporate the Toledo and Woodville Plank Road Company.

S. No. 71; To amend the act to authorize and require the recording of the official bonds of certain public officers.

S. No. 124; To incorporate the Chillicothe Cemetery Company.

S. No. 147; To incorporate the Columbus and Blendon Turnpike Company.

S. No. 166; To lay out and establish the Port Lawrence and Springfield Free Turnpike Road.

S. No. 201; To authorize the establishment of a poor house and hospital by the city of Cleveland.

S. No. 228; To authorize the Commissioners of Scioto and other counties to subscribe to the capital stock of the Scioto and Hocking Valley Railroad Company.

S. No. 244; To incorporate the Bucyrus and Shelby, and the Plymouth and De Kalb Plank Road Companies.

S. No. 247; To amend the act entitled an act for the support and better regulation of the Common Schools in the town of Akron, passed February 8, 1847, and the acts amendatory thereto.

H. No. 300; To provide for the payment of seven thousand dollars by the people of Gilead township, Morrow county, to aid in the erection of public buildings.

Resolution relative to the Lewistown Reservoir.

S. No. 45; To lay out and establish a Free Turnpike Road, from Sidney to the line of Auglaize county.

S. No. 68; To revive and amend the act for the incorporation of the Huron Plank Road Company.

S. No. 74; To amend the act entitled an act to incorporate the Medina county Mutual Fire Insurance Company.

S. No. 78; to incorporate the Lower Sandusky and Sandusky City Plank Road Company.

S. No. 98; To incorporate the Malta and Putnam Plank Road Company.

S. No. 101; To amend the law passed March 2d, 1846, to tax Money Brokers.

S. No. 130; To amend the act entitled an act to incorporate the Ripley and Hillsborough Turnpike Company, passed February 19, 1833.

S. No. 134; To amend the act for the appointment of certain officers therein named, passed February 17, 1831.

S. No. 135; To amend the act entitled an act relating to Wills, passed March 23, 1840, and for other purposes.

S. No. 136; To incorporate the South Charleston and Washington Turnpike Company.

S. No. 145; To amend the act to authorize Muskingum county and the town of Zanesville to subscribe to the capital stock of the Central Ohio Railroad Company

S. No. 161; Amendatory to the act to provide for the profitable employment of convict labor on the new State House, passed Feb. 24, 1848, and for other purposes.

S. No. 163; To repeal the fifth section of an act, entitled an act to authorize County Commissioners of this State to lay out and establish State Roads.

S. No. 169; To repeal a part of a certain act therein named.

S. No. 176; To amend the act to lay out and establish the Toledo and Port Clinton Free Turnpike Road.

S. No. 179; In relation to the Old Penitentiary lot in the city of Columbus.

S. No. 195; To amend the act to incorporate the Cleveland Gas Light and Coke Company.

S. No. 221; To incorporate the Columbus and Grove Port Turnpike Company.

S. No. 223; To authorize the County Auditor of Holmes county to levy additional tax on property in School District No. 9, Hardy township, for school house purposes.

S. No. 232; To incorporate the Iron Railroad Company.

S. No. 238. In relation to Coroners Juries.

S. No. 250; To incorporate Lower Sandusky and Rollersville Plank Road Company.

S. No. 254; To extend the limits of the town of Hamilton, and for other purposes.

S. No. 255; To incorporate the Four Mile and Seven Mile Turnpike Company.

S. No. 261; To provide for the opening and repair or [of] roads and highways on the line between the State of Pennsylvania and Ohio.

SAM'L GALLOWAY,
Secretary of State.

[No. 19.]

SECRETARY OF STATE'S OFFICE,
Columbus, O., March 23, 1849.

Received of the Committee on Enrollment of the Senate and House of Representatives, the following enrolled bills and joint resolutions:

H. No. 216; To authorize the town council of Miamisburgh to levy a tax to construct a Free Turnpike Road.

H. No. 224; To provide for the appointment of Trustees to minors residing out of this State and having property in the same.

H. No. 228; To incorporate the Mt. Pleasant Academy in Kingston, Ross county, and in relation to the Hillsborough Academy.

H. No. 247; To extend the corporate limits of the town of Clarington in the county of Monroe.

H. No. 272; To amend the act entitled an act to incorporate the Portage county Mutual Fire Insurance Company, passed February 11, 1832.

H. No. 276; To authorize the trustees of Clay township in Knox county, to redistrict said township for school purposes.

H. No. 280; To incorporate the Pickaway County Savings Institute in Circleville.

H. No. 293; To authorize the sale of certain forfeited lands in Wyandot county.

H. No. 298; To amend the act to encourage the organization of fire companies and to repeal former acts, passed Feb. 8, 1847.

H. No. 318; To incorporate the Higginsport, Russelville and Eckmansville Turnpike Road Company.

H. No. 323; To authorize the Governor to make deeds to certain school lands in Meigs county.

H. No. 334; To incorporate the Warren and Gustavus Plank Road Company, in Trumbull county.

H. No. 335; To incorporate the Hamilton and Mason Turnpike Road Company.

H. No. 347; To enable corporations on the line of the Cincinnati and Sandusky Telegraph Company, to subscribe to the stock of said company.

H. No. 365; To incorporate the Rescue Fire Engine Company No. 1, of the town of Bucyrus in the county of Crawford.

H. No. 372; To incorporate the Sunfish Railroad Company.

H. No. 388; To incorporate the Perrysburg and Maumee Union Bridge Company.

H. No. 289; To amend the act entitled an act to incorporate the Urbana and Columbus Railroad Company.

S. No. 37; Prescribing the times of holding the Supreme Court.

S. No. 76; To incorporate the Lower Sandusky, Tiffin and Fort Ball Plank Road Company.

S. No. 133; To incorporate the Springfield, Black Horse and Northampton Turnpike Company.

S. No. 142; To authorize the city of Cincinnati to erect a Poor House, and for other purposes.

S. No. 156; To authorize the trustees of townships in the county of Union to levy an additional road tax.

S. No. 217; To amend the charter of the Hillsborough and Cincinnati Railroad Company.

S. No. 226; To amend an act entitled an act for the support and better regulation of Common Schools, and to create permanently the office of Superintendent, passed March 7, 1838, and the acts amendatory thereto.

S. No. 236; To authorize the Canal Fund Commissioners to exchange certain certificates of the funded debt of this State.

S. No. 239; To incorporate the Society of Savings in the city of Cleveland.

S. No. 242; To incorporate the New Philadelphia and Cadiz Plank Road Company.

S. No. 258; To authorize subscriptions to the capital stock of the Bellefontaine and Indiana Railroad Company, by towns and townships on the line of said road.

S. No. 259; To incorporate the Barnesville Railroad Company.

Resolution relative to the rescinding of tolls on salt.

Resolution relative to waste weirs.

H. No. 191; To amend the act entitled an act to create the office of Attorney General, and to prescribe his duties, passed Feb. 16, 1846, and the act amendatory thereof.

H. No. 252; To confirm the charter of the Covington and Cincinnati Bridge Company, incorporated by an act of the General Assembly of Kentucky, passed February 17, 1846, with certain limitations.

H. No. 282; To create a special road district in Crawford county.

H. No. 328; To incorporate the Black River and Amherst Plank Road Company.

H. No. 333; To incorporate the Clifton, Cedarville and Jamestown Turnpike Road Company.

H. No. 341; To incorporate the Miami and Toledo Plank Road Company.

S. No. 32; Authorizing the conveyance to William Leonidas Davidson of all the interest of this State arising from escheat in the real and personal estate of William B. Maxey deceased.

S. No. 56; To give additional security to land titles in this State.

S. No. 107; To amend the act to regulate Literary and other societies, passed March 11, 1845, and for other purposes.

S. No. 193; To amend an act entitled an act to amend an act directing the modes of proceeding in Chancery passed February 21, 1846.

S. No. 218; To amend the act incorporating the Chagrin Falls and Cleveland Plank Road Company.

S. No. 237; In relation to the fees of grand and petit juries in Cuyahoga county.

S. No. 243; To amend the several acts incorporating turnpike companies in this State.

S. No. 265; To incorporate the Bryan Plank Road Company.

S. No. 268; In relation to the State road leading from Lower Sandusky to Findlay.

S. No. 271; To amend an act to provide for the recording of town plats, passed March 3, 1831.

S. No. 272; To incorporate the Defiance and Findlay Plank Road Company.

House joint resolution relative to appointing Trustees of the Ohio University.

Resolution relative to appointing an agent and appraisers for Western Reserve School Lands.

House joint resolution relative to the Warren county canals.

House joint resolution relative to appointing directors to the Ohio Lunatic Asylum.

House joint resolution to appoint William M. Corry a trustee for the Miami University.

H. No. 262; To amend the act to incorporate the Mad River and Great Miami Railroad Company.

H. No. 304; To incorporate the Cleveland and Twinsburg Plank Road Company.

H. No. 319; To amend the charter of the city of Ohio.

H. No. 336; To incorporate the Methodist Episcopal Church in the town of Tarlton, Pickaway county, Ohio.

H. No. 348; Incorporating the Ohio Iron and Coal Company.

H. No. 379; In relation to a new canal in the city of Dayton.

H. No. 381; To incorporate the Cuyahoga Falls Plank Road Company.

H. No. 383. To authorize the town council of the town of Akron to levy a tax to liquidate the debts due from said town.

H. No. 387; To amend the act entitled an act to repeal the act entitled an act for the support and better regulation of common schools in school district number one in Ravenna township, and for other purposes.

H. No. 392; To authorize the sale of school section sixteen, in Wells township Jefferson county.

H. No. 394; To incorporate the town of Spring Hills in the county of Champaign.

S. No. 160; Declaring valid a certain Sheriff's deed therein named. House joint resolution relative to a day of Thanksgiving.

House joint resolution relative to the number of Journals, Laws, &c. sent to the several counties of this State.

House joint resolution relative to Governor's salary.

Resolutions fixing the number of copies of the Laws, General and local, and resolutions passed at the present session, and the Journals of the House distributable to the several counties of the State, and other purposes.

S. No. 1; To incorporate the Western Reserve Farmer's Insurance Company.

S. No. 34; To amend the act relating to juries.

S. No. 38; To revive the act entitled an act appointing commissioners to lay out and establish a free turnpike road from Eaton to Sugar Valley in Preble county, passed February, 1848.

S. No. 116; To incorporate the Warren and Lake Erie Plank Road Company.

S. No. 131; To amend the act entitled an act to incorporate the Milford and Chillicothe Turnpike Road Company, passed February 11, 1832.

S. No. 170; To extend the corporate limits of the town of Portsmouth.

S. No. 171; To amend an act for the relief of occupying claimants of land.

S. No. 245; To detach certain sections from Morrow county; and attach the same to Richland county.

S. No. 264; To incorporate the Mansfield Female Seminary in the county of Richland.

S. No. 266; To lay out and establish the Portage Free Turnpike Road in the county of Wood.

Resolution relative to the admission of Margaret Scantling into the Lunatic Asylum.

SAM'L GALLOWAY,
Secretary of State.

[No. 20.]

SECRETARY OF STATE'S OFFICE,
Columbus O., March 26, 1849.

Received of the Committee on Enrollment of the Senate and House of Representatives, the following enrolled bills and joint resolutions:

H. No. 29; To regulate proceedings before Justices of the Peace.

H. No. 175; To amend an act entitled an act to authorize the city of Dayton to subscribe to the capital stock of certain Railroad Companies, passed Feb. 8th, 1847.

H. No. 199; To amend the act defining the powers and duties of Justices of the Peace and Constables in civil cases.

H. No. 238; To amend the act entitled an act for appointing Notaries Public, passed February 7, 1816.

H. No. 292; To amend the act entitled an act to regulate public shows, passed Feb. 28, 1831.

H. No. 299; To secure an early distribution and publication of the laws of a general nature.

H. No. 308; To incorporate the Geauga Plank Road Company.

H. No. 324; Further to amend the act entitled an act to incorporate the town of Fairport, passed March 14, 1836.

H. No. 329; To amend the act entitled an act to authorize Nathan Starr to sell and convey certain real estate, the property of the minor heirs of his late wife, Mary W. Starr, passed January 26, 1844.

H. No. 330; To incorporate the Akron Plank Road Company.

H. No. 337; To incorporate the town of New Burlington in the counties of Clinton and Greene.

H. No. 342; To incorporate the Middleport and Rutland Plank Road Company.

H. No. 334; To amend the act entitled an act to regulate the sale of ministerial and school lands, and the surrender of permanent leases thereto, passed Feb. 2, 1843.

H. No. 349; To amend the act entitled an act to incorporate the St. Paris, Elizabethtown, Fletcher, Piqua and Covington Turnpike Company, passed March 9, 1839.

H. No. 353; To legalize the surrender of a lease by Luther Shepard to certain ministerial lands therein named, and to authorize the sale of school section sixteen in Goshen township, Lucas county.

H. No. 356; To incorporate the New Richmond and Bethel Turnpike Road Company.

H. No. 357; To repeal the provision of an act passed February 14, 1848, entitled an act for the support and better regulation of common schools in the town of Akron.

H. No. 364; To incorporate the Dayton, Shaker Village and Xenia Turnpike Company.

H. No. 366; To authorize the Trustees of Berne township, Athens county, to lease certain School lands therein named.

H. No. 369; To incorporate the Manchester and Bentonville Turnpike Company.

H. No. 371; To authorize the City Council of Cincinnati to levy an additional tax in aid of the Disabled Fireman's Fund.

H. No. 374; To amend the act entitled an act to incorporate the Proprietors of the Cemetery of Spring Grove, passed January 21, 1845.

H. No. 389; To incorporate the First Associate Reformed Church and Society in the town of Wellsville, county of Columbiana.

H. No. 393; To incorporate the Barnesville and Warren Turnpike Road Company.

S. No. 102; To incorporate the Cleveland Mutual Insurance Company.

S. No. 115; To repeal so much of the sixth section of the act of January 22d, 1848, entitled an act to provide for the assessment of personal property, and the valuation of new entries and new structures as requires the County Auditor to enter upon the duplicate of the county the amount of tax levied for road purposes.

S. No. 159; To authorize the trustees of Marion and Jefferson township in the county of Clinton, to borrow money, and for other purposes.

S. No. 181; To incorporate the Evangelical Lutheran Synod of Ohio and adjacent States.

S. No. 209; To amend the act entitled an act regulating judgments and executions, passed March 1, 1831.

S. No. 220; To incorporate the Columbus and Worthington Plank Road or Turnpike Company.

S. No. 240; Recognizing the New Orleans and Ohio Telegraph Company as a body corporate and politic within the State of Ohio.

S. No. 248; To amend the act authorizing the commissioners of Fairfield county to subscribe stock in a Railroad Company, passed Feb. 24, 1848.

S. No. 256; To punish Judges for appearing as Attorneys in the Courts of Justices of the Peace.

S. No. 270; To provide for the taxation of the Little Miami Railroad Company.

S. No. 273; Relating to certain real estate in Franklinton, Franklin county.

S. No. 277; To amend an act entitled an act fixing the times of holding the Court of Common Pleas in the Eleventh Judicial Circuit, passed February 7th, 1848.

S. No. 278; To render practicable the provisions of the act to authorize the Commissioners of Highland county to subscribe to the capital stock of the Hillsborough and Cincinnati Railroad Company.

House joint resolution relative to Slavery and the slave trade in the District of Columbia.

House joint resolution relative to the oppressed people of color in the United States.

Resolution relative to the examination of the Deaf and Dumb, Lunatic and Blind Asylums.

Resolution relative to purchasing certain copies of Laws and Journals.

Resolution relative to taking a vote by the people to amend the Constitution of the State.

SAM'L GALLOWAY,
Secretary of State.

REPORT
OF THE
JOINT SELECT COMMITTEE ON STANDING RULES FOR
THE GOVERNMENT OF BOTH BRANCHES.

The Joint Select Committee, to which was assigned the duty of preparing joint rules for the government of the two Houses, now report and recommend the adoption of the following

R E S O L U T I O N :

Resolved by the Senate and House of Representatives, That the following be adopted as the Joint Standing Rules for the government of the present General Assembly of the State of Ohio:

1. When the business requires the attendance of the Senate in the Representatives' Hall, they with their Clerk, shall be conducted within the bar and there seated ; and the Speaker of the Senate shall take a seat in the Speaker's chair on the right of the Speaker of the House of Representatives.

2. All messages shall be conveyed by the Sergeant-at-Arms of the House from which they are sent ; and in the case of the absence or inability of the Sergeant-at-Arms, then by such person as the Speaker may designate for that purpose.

3. When a message shall be sent by either House to the other, it shall be immediately announced at the bar of the House to which it is sent, by the door-keeper, and shall be, by the bearer, delivered to the Clerk of the other branch, at his desk, who shall read the same to the House to which it belongs.

4. After a bill or joint resolution has passed both Houses, and amendments made by either House may be pending, it shall not be in order for either House to postpone such bill or resolution beyond the session; but all differences between the two Houses relative to amendments, may be submitted to committees of conference.

5. In all cases of difference between the two Houses relative to amendments, the order shall be to insist in the first instance, before adhering; and the first adherence, by either House, shall preclude a committee of conference.

6. Committees of conference shall be appointed when any disagreement of opinion shall exist between the two Houses, which com-

mittee shall report the result of their deliberations to their respective Houses.

7. When the committees of conference of the two Houses shall disagree, other committees may be appointed; and if either of the Houses shall disagree to any report of a committee of conference, such House shall forthwith notify the other of such disagreement, and request another committee of conference; and thereupon other committees shall be appointed.

8. When a bill or joint resolution shall have passed either House, notice thereof shall be forthwith communicated to the other House, by message.

9. When a bill shall be reported to either House, advice thereof shall be given to the other House; but no notice of the presentation or reference of petitions, memorials or remonstrances, or of the appointment of committees, shall be given.

10. When a bill or joint resolution which shall have been passed in one House, is rejected in the other, or postponed beyond the session, notice thereof shall be given to the other House in which the same may have passed.

After a bill shall have passed both Houses, it shall be enrolled by the Clerk of the House in which it originated.

12. When bills or joint resolutions are enrolled, they shall be examined by a joint committee of two members from each House, to be appointed a standing committee for that purpose, whose duty it shall be to compare the enrolled with the engrossed bills and resolutions passed by the two House, correct any clerical errors which may be discovered, and report forthwith to their respective Houses.

13. After examination and report, each act and joint resolution shall be signed in their respective Houses; first by the Speaker of the House of Representatives, and then by the Speaker of the Senate.

14. Joint resolutions temporary in their character, shall not be enrolled, signed by the Speakers, nor published with the laws. The following, amongst others, are of this character: Resolutions for going into elections, for printing extra copies, for the appointment of joint select committees, calling upon public officers for information, furnishing copies of laws or reports, allowing claims.

15. The clerk of the Senate shall attach to each act and joint resolution signed by the Speakers, the date of the last action of either House thereon, and then deliver it to a member of the committee of enrollment on the part of the Senate, who shall deposite the same in the office of the Secretary of State, and take his receipt therefor, which receipt shall be filed with the papers of the Senate.

16. When the two Houses shall meet to proceed by joint ballot, to any election, the Speaker of the Senate shall preside so far as to declare the officers to be elected, the result of each balloting, and the name of the person elected.

17. Each House in joint meeting, shall be governed by the same rules of order that govern them in their separate Houses, and be attended by their respective Sergeant-at-Arms.

18. No person shall be declared elected to any office, who shall not have received a majority of all the votes of the members present, and voting; and each paper put in the ballot box shall be counted a vote, unless the number of papers shall exceed the number of members voting, in which case it shall be declared there is no election.

19. It shall be the duty of the Speaker of the Senate, in all elections by joint ballot, or otherwise, after the votes have been collected, to call on the members present, whether they have voted, if not, to come forward and vote, and charge the members accordingly.

20. All elections by joint ballot shall be conducted singly, only one officer being voted for at each balloting.

21. The Sergeant-at-Arms of the respective Houses shall discharge the ordinary duties of Door-keepers until otherwise directed.

22. When the two Houses shall meet to proceed by joint ballot to any election, no person shall be permitted to remain within the bar, excepting the Members, Clerks and their assistants, Sergeants-at-Arms and their assistants, and the regular reporters for the newspapers.

23. When a bill shall have passed in either House, and be sent to the other for concurrence, the accompanying documents shall be transmitted with such bills.

The Committee will now proceed to state wherein these rules differ from the joint rules adopted for the government of the two Houses at the late session.

1st. Rules, 11, 22, 24, 25 and 26, being rules in which the subject of printing is mentioned, are stricken out.

2d. Rules 12 and 13, remain unchanged but are numbered 11 and 12.

3d. Rule 14 is here numbered 13, the word bill stricken out in the first line and act inserted; and the words at the end directing the Speaker of the Senate, are omitted, for a reason mentioned below.

4th. Rule 14 is designed as a substitute for a rule adopted last session, and not to be found in the pamphlet copy of the rules. It is number 27, and may be found in appendix to House Journal, 1847-8, page 57, and at page 251, of the appendix to the Senate Journal for the same year.

5th. Rule 15 is altered by making it the duty of the Clerk of the Senate to attach to each act and joint resolution when enrolled, and signed, the date of the last action of either House thereon. For the reasons of this change the Committee refers to the report of the Judiciary Committee of the Senate upon the validity of the election of Judge Key, and found in Senate Journal, 1847-8, page 668.

6th. Rule 20, is entirely changed. As that rule stood at former sessions, it was difficult to tell whether a quorum had voted; and if the two vacancies in the same office occurred at different periods not elapsed on the day of the election, it was impossible, but by the arbitrary will of the Speaker, to tell to which of the two dates the persons elected should be respectively assigned.

7th. The 22d rule herewith reported, and which excludes strangers from within the bar of the House whilst elections by ballot are

going on, seems necessary. The tellers are not unfrequently personally unacquainted with many of the members, and it will be wise to guard against the possibility of mistakes in this particular, before any occur.

8th. The words "by message," are added to the eighth rule.

STANDING RULES OF THE SENATE.

1. The Speaker shall take the chair, every day, at the hour to which the Senate shall have previously adjourned, and shall immediately call the Senate to order; and, on the appearance of a quorum, shall cause the Journal of the preceding day to be read.

2. He shall preserve decorum and order, may speak to points of order in preference to other members, rising from his seat for that purpose, and shall decide questions, subject to an appeal to the Senate by any two members.

3. He shall examine and correct the Journal before the same shall be read.

4. He shall have a right to name any member to perform the duties of the chair, which appointment shall not stand beyond an adjournment.

5. He shall, at the commencement of each session, appoint the following standing committees:

The committee on the Judiciary, and the committee on Finance, consists of five members each; and the others of three members each.

On Privileges and Elections; on Judiciary; on Finance; on Claims; on Public Works and Public Lands; on Roads and Highways; on Railroads and Turnpikes; on Common Schools and School Lands; on Universities, Colleges and Academies; on Medical Societies and Colleges; on Militia; on Agriculture; on Manufactures and Commerce; on Corporations; on Currency; on Benevolent Public Institutions; on the Penitentiary; on the Library; on State Buildings; on New Counties; on Retrenchment; on Salaries and Fees of Public Officers; on Public Printing; on Federal relations; on Enrollment.

6. All committees shall be appointed by the Speaker, unless otherwise ordered by the Senate; in which case, they shall be elected by ballot.

7. The Speaker, or any two members, may have a call of the Senate, and have absent members sent for, unless they, for special reasons, shall be excused by a majority of the Senate present.

8. That as soon as the Journal shall have been read, the Speaker shall call, first, for the presentation of petitions; second, reports of standing committees; third, for reports from select committees. Bills for the second reading shall next be disposed of; then bills for the third reading; next, the messages received from the other House; and then the Chair shall announce the orders of the day.

9. If any member transgresses the rules of the Senate, the Speaker shall, or any member may, call to order; in which case, the member called to order shall immediately sit down, unless permitted to explain, and the Senate, if appealed to, shall decide the question of order.

10. All questions shall be put in this form to-wit: "You who are of opinion that the motion be agreed to, will say aye; those of the contrary opinion say no." And in doubtful cases, the Speaker may direct, or any member call for a division.

11. Every member present, when a question is put, shall vote, unless he shall, for special reasons, be excused by the unanimous vote of the rest of the Senate.

12. Every motion shall be reduced to writing, if the Speaker or any member desire it.

13. A motion to adjourn or take a recess, shall always be in order, unless a Speaker is speaking, and shall be decided without debate.

14. When a member is about to speak, he shall rise in his place and respectfully address the Speaker; and when a member is speaking, no other shall pass between him and the Chair.

15. No member shall speak more than twice on any question, without leave of the Senate.

16. After a motion is made and seconded, it shall be stated by the Speaker, or, being in writing, shall be handed to the Chair, and read by the Speaker or Clerk, previous to debate.

17. After a motion is stated by the Speaker, or read by the Clerk, it shall be deemed in the possession of the Senate, but may be withdrawn at any time before the decision or amendment, by consent of the Senate.

18. When a motion is under debate, no motion shall be received, unless to adjourn or take a recess; to take the previous question, which shall be decided without debate; to lie on the table; to proceed to the orders of the day; to postpone to a day certain; to postpone indefinitely; to commit or amend; which motions shall have precedence in the order in which they here stand.

19. The previous question shall be put in these words: "Shall the main question now be put?" and it shall be admitted on the demand of three members, (although no amendments shall have been proposed to the original proposition,) and, until decided, shall preclude all amendments, or further debate on the main question; and when it shall have been decided that the main question shall now be put, no mo-

tion, call or order shall interrupt the vote, except a motion to adjourn or take a recess.

20. A member may call for a division of the question, which shall be divided, if it comprehends questions so distinct that one being taken away, the rest may stand entire for the decision of the Senate.

21. No committee shall absent themselves from the Senate chamber, by reason of their appointment, during the sitting of the Legislature, without leave.

22. The first and second reading of each bill shall be by its title only, unless its reading be called for by a member of the Senate, and shall be for information; if objection be made to it, the question shall be, "Shall the bill be rejected?" If no objection be made, or if the question to reject be lost, the bill shall go to a second reading without further question.

23. Upon the second reading of the bill, the Speaker shall state it ready for commitment or engrossment; and if no motion be made, the Speaker shall commit it to the committee of the whole, and make it the order of the day for that day; and if the bill be ordered to be engrossed, the Senate shall determine the day upon which it shall be read a third time.

24. When a question is lost on engrossing a bill for a third reading on a particular day, it shall not preclude a question to engross it for a third reading on a different day, unless a division be called for; but if on a division, the question on engrossing a bill without including the time for a third reading shall fail, the bill shall be considered as lost.

25. When a bill is engrossed, the Speaker shall, at the time previously appointed by the Senate, announce it as ready for a third reading, and if no objection be made, it shall go to a third reading without question.

26. A bill, after commitment and report thereof, may be recommitted at any time previous to its passage.

27. In forming the committee of the whole, the Speaker shall leave the chair, and appoint a chairman to preside.

28. In filling blanks the largest sum and longest time shall be put first.

29. The rules of proceeding in the Senate shall be observed in committee of the whole, so far as may be applicable.

30. In all cases where the Senate shall be equally divided, the question shall be lost; but a reconsideration may be moved by any member voting in the affirmative.

31. A motion to reconsider a vote shall be deemed out of order after the expiration of two days from the time such vote was taken. All motions for reconsideration shall come from a member voting in the majority, except when the Senate shall be equally divided.

32. Every petition, report of a committee, or other communication presented and received, shall be taken up and read without motion, unless otherwise ordered by the Senate.

33. The interim between the morning and evening session of the Senate shall be termed a recess; and on re-assembling on the same

day, any question, pending at the time of taking such recess, shall be resumed without motion to that effect.

34. No bill shall, at any time, be amended by striking out all after the enacting clause, substituting therefor any other bill containing matter whose tenor and general character is entirely different from the subject matter of such bill.

35. Motions to lay on the table, take from the table, or to go into committee of the whole shall be decided with debate.

36. No Senator shall vote on any question in the event of which he is immediately, and particularly interested.

37. Jefferson's Manual shall be received as a rule in all cases not provided for in the foregoing rules.

38. These rules shall not be altered without, at least, one day's notice of the intention of such alteration having been previously given.

39. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by a vote of the Senate; the question being stated, "shall the reading be dispensed with?" provided, nothing in this rule shall be so construed as to prevent Senators from reading papers in argument according to parliamentary usage.

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ASSOCIATIONS, COLLEGES, SOCIETIES, LITERARY AND RELIGIOUS.

- 11. To incorporate the Springfield Female Seminary in Clark county, 81, 86, 135, 210, 218, 370.
- 28. To incorporate the Evangelical Lutheran St. John's Congregation of Springfield, Clark county, Ohio, 96, 106, 171, 209, 218, 259.
- 67. To incorporate the Butler Encampment No. 7, of the Independent Order of Odd Fellows, 152, 159, 267, 511.
- 79. To amend the act to incorporate the Eclectic Medical Institute of Cincinnati, passed March 10, 1845, 166, 179, 258, 262, 531.
- 103. To incorporate the Miller Academy, 207, 213, 308, 311, 321, 411, 472.
- 107. To incorporate Toledo Lodge No. 144, of Free and Accepted Masons in the county of Lucas, 217, 321, 328, 392, 411, 654, 661.
- 123. To incorporate the Trustees of the Pomroy Academy, 248, 252, 336, 373, 386, 531, 542.
- 124. To incorporate the Chillicothe Cemetery Association, 248, 252, 340, 409, 413, 617.
- 140. To incorporate Hamilton Lodge No 17, of the Independent Order of Odd Fellows, 270, 283, 348.
- 168. To incorporate the Cadiz High School, 316, 321, 418, 432, 430, 543.
- 173. To incorporate the Columbus Art Union, 325, 382, 382, 420, 430, 536, 542.
- 181. To incorporate the Evangelical Synod of Ohio and adjacent States, 334, 342, 419, 420, 430, 591.
- 182. To incorporate the Ohio Educational Society of the Evangelical Lutheran church, 334, 342, 419, 420, 430, 531, 542.
- 234. To incorporate the Columbus Horticultural Society, 446, 477, 503, 504, 535.

BILLS OF THE SENATE—Continued.**Number.**

946. To appoint Harmon B. Mayo trustee of the Miami University, 475.
984. To incorporate the Mansfield Female Seminary, in the county of Richland, 563, 568, 605, 681, 681.

BRIDGE COMPANIES, PLANK ROADS, &c.

17. To incorporate the Perrysburg and Findlay Plank Road company, 85, 96, 159, 161, 162, 166, 324.
18. To incorporate the Perrysburg and Maumee Union Bridge company, 85, 96, 144, 269, 285.
20. To incorporate the Norwalk Plank Road company, 86, 96, 149, 175, 205, 247.
23. To amend the act to incorporate the Toledo Plank Road company, passed January 28, 1848, 86, 96, 149, 166, 180, 330, 543.
26. To incorporate the Toledo Bridge company, 96, 101, 169, 232, 289.
27. To incorporate the Painesville and Warren Plank Road company, 96, 101, 170, 180, 344.
28. To incorporate the Toledo and Woodville Plank Road company, 138, 142, 242, 341, 356, 543, 561, 585.
68. To revive and amend the act for the incorporation of the Huron Plank Road company, passed February 19, 1845, 158, 159, 267, 303, 314, 626, 631.
76. To incorporate the Lower Sandusky, Tiffin and Fort Ball Plank Road company, 164, 166, 257, 374, 386, 651.
78. To incorporate the Lower Sandusky and Sandusky City Plank Road company, 164, 166, 259, 260, 272, 636.
89. To incorporate the St. Marys and Wapakonnetta Plank Road company, 202, 204, 298, 341, 355, 543.
90. To incorporate the St. Marys and Willshire Plank Road company, 202, 204, 429, 443, 500.
98. To incorporate the Malta and Putnam Plank Road company, 204, 213, 277, 321, 332, 346, 626.
116. To incorporate the Warren and Lake Erie Plank Road company, 228, 238, 336, 366, 375, 631.
132. To incorporate the Conneaut and Youngstown Plank Road company, 257, 348, 354, 368, 400.
151. To incorporate the Cleveland and Willoughby Plank Road company, 291, 304, 351, 354, 368, 543.
166. To amend an act to incorporate the Rockport Plank Road company, entitled an act to incorporate the Chagrin Falls and Cleveland Plank Road company, and for other purposes, 351, 355, 435, 442, 465, 573, 574.
218. To amend the act incorporating the Chagrin Falls and Cleveland Plank Road company, 432, 409, 449, 465, 520, 626.

BILLS OF THE SENATE—Continued.

Number.

- 220. To incorporate the Columbus and Worthington Plank Road or Turnpike company, 402, 410, 476, 482, 503, 553, 633.
- 222. To incorporate the Bellvue, Monroeville, Norwalk and Birmingham Plank Road company, 403, 410, 449, 457, 466, 468, 585.
- 229. To incorporate the Eaton and New Madison Plank Road company, 430, 443, 477, 482, 503.
- 242. To incorporate the New Philadelphia, Leesburgh and Cadiz Plank Road company, 461, 469, 507, 516, 513, 556, 637.
- 344. To incorporate the Bryan and Shelby Plank Road company, 367, 501, 516, 525, 587.
- 250. To incorporate the Lower Sandusky and Rollersville Plank Road company, 484, 503, 547, 552, 568, 636.
- 265. To incorporate the Bryan Plank road company, 573, 582, 621, 635, 663.
- 272. To incorporate the Defiance and Findlay Plank road company, 598, 602, 635, 678.
- 274. To incorporate the Oberlin Plank road company, 599.

NEW CONSTITUTION.

- 6. To provide for ascertaining the will of the people of this State upon the question of calling a convention to amend or change the constitution of the same, 81, 86, 135, 245, 307, 573, 583.

RAILROAD COMPANIES.

- 13. To incorporate the Springfield and Columbus Railroad Company, 81, 86, 136, 165, 180, 263, 270.
- 30. To amend the charter of the Huron and Oxford Railroad Company, 97, 101, 172, 221, 228, 471.
- 49. To amend the charter of the Bellefontaine and Indiana Railroad Company, 130, 137, 240, 302, 314.
- 61. To incorporate the Scioto Valley Railroad Company, 142, 145, 245, 399.
- 89. To aid the Ohio and Mississippi Railroad Company, 201, 204, 298, 450, 567, 582, 614.
- 92. To amend the act incorporating the Toledo, Sandusky and Michigan City Railroad Company, 202, 204, 276, 291, 305, 370.
- 100. To amend the act to incorporate the Central Ohio Railroad Company, 206, 213, 278, 282, 292, 531.
- 114. Granting the right of way to the Junction Railroad Company, and extending its privileges, 225, 228, 301, 320, 333, 531, 542.
- 121. To amend an act entitled an act to incorporate the Dayton, Lebanon and Deerfield Railroad Company, passed Feb. 6, 1847, and the acts amendatory thereto, passed Feb. 14, 1848, 240, 245, 336, 343, 355, 473.
- 157. To incorporate the Columbus, Chillicothe and Portsmouth Railroad Company, 298, 305, 361, 429, 426, 500.

BILLS OF THE SENATE—Continued.**Number**

178. Further to amend the act regulating Railroad Companies, passed Feb. 11, 1848, 333, 343, 419, 422, 430, 585.
184. To incorporate the Delaware, Millford, Mechanicsburgh and Springfield Railroad Company, 336, 343, 419, 461, 464, 548.
185. To amend and reduce into one the several acts relating to the Cincinnati, Hamilton and Dayton Railroad Company, 334, 343, 419, 456, 500, 529, 617.
219. To amend the charter of the Hillsborough and Cincinnati Railroad company, 400, 409, 449, 457, 464, 637.
232. To incorporate the Iron Railroad company, 446, 464, 477, 488, 503.
251. To amend the several acts relating to the Hamilton and Dayton Railroad company, 484, 503, 548.
258. To authorize subscription to the capital stock of the Belfontaine and Indiana Railroad company, by towns and townships on the line of said road, 534, 539, 581, 592, 654.

DEEDS, &c.

69. To authorize county surveyors to take acknowledgments of deeds, &c., 158, 161, 256, 372, 442, 464.
160. Declaring valid a certain Sheriff's deed therein named, 298, 305, 381, 603, 635, 681.
198. To amend the act entitled an act to incorporate the Belfontaine and Indiana Railroad company, 359, 368, 435, 441, 464, 585.

DIVORCE.

70. To divorce Caleb Baker from his wife Sarah Baker, 159, 161, 256, 580.
153. Supplementary to the acts concerning divorce and alimony, 297, 304, 351, 371.
172. To amend the act in relation to divorce and the care of children, 324, 332, 382, 430, 605.

ENABLING ACTS.

21. To authorize the trustees of Springfield township, to subscribe money to aid in the erection of a Town Hall in Springfield, in the county of Clark, and to establish said Hall as the place of holding all elections in said township, 86, 149, 303, 358.
35. To authorize the town council of Akron to levy a tax to liquidate the debts due from said town, 113, 115, 219, 221, 471.
38. To authorize the town council of the town of Sidney, to subscribe to the capital stock of the Sidney and Waupakonnetta Railroad company, 120, 136, 200, 285, 292, 301, 586, 617.

BILLS OF THE SENATE—Continued.**Number.**

- 81. To authorize the Council of the city of Cincinnati, to borrow money for the improvement and extension of the city water works, 169, 179, 258, 290, 304, 312, 322, 545.
- 104. To authorize the commissioners of Highland county, to subscribe to the capital stock of the Hillsborough and Cincinnati Railroad company, 208, 308, 320, 532, 570..
- 113. Authorizing the city of Cleveland to subscribe to the capital stock of the Cleveland and Pittsburgh Railroad company, 224, 228, 328, 331, 351, 362, 570.
- 120. To authorize the city Council of Columbus to occupy a part of a certain street and alley therein mentioned for a market house, 240, 336, 353, 397, 543.
- 142. To authorize the city of Cincinnati to build a Poor House, 275, 283, 344, 350, 355, 626.
- 145. To amend the act to authorize Maskingum county, and the town of Zanesville, to subscribe to the capital stock of the Central Ohio Railroad company, 275, 283, 350, 386, 587, 617.
- 160. To authorize the Trustees of Marion and Jefferson townships, in the county of Clinton, to borrow money and for other purposes, 298, 305, 373, 386, 691.
- 179. Authorizing the city Council of the city of Columbus, to lay out streets and alleys across the old Penitentiary lot in said city, 333, 342, 419, 420, 431.
- 180. To amend the act entitled an act to authorize the commissioners of Franklin county, and the town council of the city of Columbus, to subscribe stock to certain Railroad companies, 334, 343, 379, 391, 419.
- 188. To authorize the town council of Newark to subscribe to the capital stock of the Newark Plankroad company, 342, 355, 434, 450, 464, 587.
- 229. Authorizing the commissioners of Scioto county to subscribe to the capital stock of the Scioto and Hocking Valley Rail Road Company, 423, 430, 477, 504, 517, 584, 613.
- 248. Authorizing the commissioners of Fairfield county to subscribe stock in a Rail Road Company, passed Feb. 24, 1848, 483, 503, 517, 579, 590, 610, 681.

FREE TURNPIKE ROADS.

- 45. To lay out and establish a free turnpike road from Sidney to St. Marys. 123, 130, 240, 260, 271, 461, 469, 617.
- 47. To establish a free turnpike road from Carrollton, in Montgomery county, to Eaton, in Preble county, 124, 130, 240, 249, 262, 399.
- 55. To incorporate the Sugar Valley and Camden free turnpike road, 137, 142, 261, 271, 399.

BILLS OF THE SENATE—Continued.**Number.**

- 63. To establish a free turnpike road from Eaton, by way of West Florence, to the Indiana state line, on the Boston state road, 144, 146, 255, 261, 271, 399.
- 82. To amend the act entitled an act to establish a free turnpike road from Marysville, in Union county, to Kenton, in Hardin county, 169, 179, 258, 261, 272, 531.
- 84. To lay out and establish a free turnpike road from Newton, in Union county, to Delaware, in Delaware county, 172, 180, 267, 282, 292, 358.
- 126. To lay out and establish a free turnpike road from the McCutchinsville road to the Maumee and Western Reserve road, in Wood county, 249, 262, 340, 354, 368, 637.
- 141. To amend an act entitled an act to establish a free turnpike road from Bellefontaine, in Logan county, to the Indiana state line, 270, 283, 348, 356, 442.
- 166. To lay out and establish the Port Lawrence and Springfield free turnpike road, 311, 321, 418, 429, 444, 461, 613.
- 176. To lay out and establish the Port Clinton and Toledo free turnpike road, 326, 332, 418, 423, 654.
- 205. To incorporate the Waterville and Lafayette turnpike road, in the counties of Lucas, Henry and Williams, 367, 375, 436, 538.
- 207. To establish a free turnpike road from New Paris to New Westville, in Preble county, 372, 375, 436, 441, 464, 585.
- 263. To amend the act entitled an act appointing commissioners to lay out and establish a free turnpike road from Eaton to Sugar Valley, in Preble county, 553, 588, 632, 661, 687.
- 266. To lay out and establish the Portage free turnpike road, in the county of Wood, 575, 591, 632, 661, 691.

MILITIA.

- 199. To amend the militia laws of the State of Ohio, 359, 368, 435, 468, 482, 510.
- 235. To organize the county of Ashland a separate brigade, 446, 464, 477, 503, 587.
- 262. To repeal the several acts therein named, regulating the militia, 548, 555, 656.

PUBLIC AND COUNTY OFFICERS.

- 24. Concerning the power and duties of State Auditor, 87, 96, 207, 216, 219, 320, 580, 620.
- 134. To amend the act entitled "an act for the appointment of certain officers therein named," passed Feb. 17, 1831, 264, 271, 348, 352, 368, 667.
- 249. To amend the act to create the office of county surveyor, 493, 503, 547.

BILLS OF THE SENATE--Continued.

PUBLIC WORKS--BOARD OF.

Number

7. To provide for the election of the Board of Public Works by the people, 81, 86, 135.

LANDS--GAVE OF, &c.

3. Granting the unsold and unappropriated lands to actual settlers, 81, 86, 135, 281, 444, 464, 556, 693.
5. To exempt homesteads from forced sale on execution, and for other purposes, 81, 86, 135, 148, 206, 429.
16. To provide for the sale of section 16, in Caryall township, Paulding county, 82, 87, 144, 342, 355, 541.
57. To authorize the sale of the north-west quarter of section No. 32, township 8, north range 12, east, in the county of Wood, 142, 145, 242, 245.
119. To authorize the sale of section 16, in Liberty township, Seneca county, 234, 238, 336, 343, 531.

NEW COUNTIES.

48. To erect the county of Walhonding, 288, 292, 301.

RELIEF ACTS.

9. For the relief of John Devine, James M. Snyder and William Sharp, 81, 86, 135, 151, 163, 169, 180, 296.
32. Making William Leonidas Davidson the legal heir of William B. Maxey, deceased; 101, 113, 207, 235, 245, 675.
57. Making Ophelia Piper the legal heir of Zadoch Tillotson, of Medina county, and changing the name of said Ophelia Piper to Caroline Tillotson, 138, 242, 259, 271, 431.
68. For the relief of the Harrison, Trenton, Rochester and Bentonville Turnpike company, 145, 152, 255, 262, 531.
230. For the relief of the Steubenville, Cadiz and Cambridge M'Adamized road company, 430, 443, 477.

ROAD, STATE AND TOWNSHIP TAX.

106. Regulating the time of performing labor on roads and highways, 217, 271, 328, 333, 359, 613.
108. To lay out and establish a graded state road in the counties of Washington and Morgan, 217, 221, 328, 333, 472, 484, 529, 542.
129. To lay out and establish a state road in the counties of Geauga and Ashtabula, 251, 262, 299, 301, 305, 344.
133. To repeal the 5th section of an act to authorize the county com-

BILLS OF THE SENATE—Continued.

Number.

- missioners of this State, to lay out and establish state roads, 308, 313, 468, 471, 613, 636.
183. To amend the act entitled an act to establish a graded state road in the counties of Meigs, Gallia and Jackson, passed January 28, 1848, 334, 342, 416, 422, 430.
261. To provide for the opening and repair of roads and highways on the East line of the State of Ohio, 548, 550, 626.

SCHOOLS, SCHOOL LANDS, &c.

25. To organize school district No. 7, in Liberty township, Clinton county, 96, 101, 169, 180, 247.
51. For the better organization of public schools in cities, towns, &c., 134, 137, 242, 339, 343, 399.
52. To amend the act for the support and better regulation of common schools, in the city of Columbus, passed February 3, 1845, 134, 137, 206, 210, 218, 251.
54. For the better support of common schools in Perrysburg, Wood county, 135, 137, 241, 245, 543.
66. To provide for the sale of certain school lands therein named, situated in Washington township, Miami county, 152, 159, 256, 285, 338, 343, 541.
77. To authorize the sale of school section 16, in Monroe township, Preble county, 164, 166, 257, 339, 343, 400.
106. To authorize the school directors of district No. 13, in Jefferson township, Fayette county, to sell and convey certain real estate, 216, 218, 322, 332, 541.
117. To provide for the sale of the Western Reserve school lands, 228, 238, 278, 292, 323.
138. To authorize the sale of certain school lands therein named, 269, 283, 348, 353, 363, 542.
165. Further to amend the act entitled an act for the regulation of common schools, and to establish permanently the office of Superintendant, 309, 314, 418.
197. To authorize the sale of school lands belonging to Madison township, (fractional) in Clark county, 352, 368, 425, 443, 543.
223. To authorize the county Auditor of Holmes county to levy an additional tax in school district No. 9, Hardy township, for school purposes, 409, 423, 449, 460, 469, 626.
226. To amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March 7, 1838, and the act amendatory thereto, 432, 480, 477, 480, 503, 641.
241. To extend the time of payment of the north west quarter of section 16, Perry township, Morrow county, 440, 469, 509, 529, 585.

BILLS OF THE SENATE—Continued.

Number.

247. To amend the act entitled an act for the better organization of public schools in cities, towns, &c., passed Feb. 15, 1849, 476, 503, 547, 552, 569, 617.
269. To extend the time of payment of certain school lands, 596, 598, 610, 654.

TURNPIKES.

15. To incorporate the Rossville and Millville Turnpike Road company, 81, 87, 144, 165, 180, 229.
29. To amend the act to incorporate the Ross county Turnpike company, passed February 19, 1848, 97, 101, 170, 235, 245, 399.
31. To incorporate the Hamilton, Rossville, Millville and Scipio township road company, 101, 113, 172, 180, 247.
60. To amend the charter of the Cincinnati, Lebanon and Springfield Turnpike company, 142, 145, 242, 260, 271, 282, 586.
91. Supplementary to the act to incorporate the Troy and Newton Turnpike company, 202, 204, 276, 291, 305, 531.
130. To amend the act entitled an act to incorporate the Ripley and Hillsborough Turnpike company, passed February 19, 1833, 251, 262, 348, 366, 376, 617, 626.
131. To amend the act entitled an act to incorporate the Milford and Chillicothe Turnpike Road company, passed February 11, 1832, 252, 262, 348, 366, 376, 629, 653, 663, 672.
133. To incorporate the Springfield and Northampton Turnpike company, 262, 270, 347, 386, 636.
136. To incorporate the South Charleston and Washington Turnpike company, 265, 271, 348, 354, 368, 373, 636.
147. To incorporate the Columbus and Blendon Turnpike company, 286, 292, 354, 373, 386, 585.
155. To incorporate the Liberty township Turnpike company, 297, 304, 361, 373, 386, 531, 542.
162. A bill further to amend the act incorporating the Wayne, Medina, and Cuyahoga Turnpike company, 307, 313, 382, 441, 465, 468, 585.
167. For the extension of the Maumee and Western Reserve road, 312, 321, 361, 365.
194. To amend the act entitled an act to incorporate the Millville, Reily and Miltonville Turnpike company, 350, 355, 435, 441, 464, 585.
221. To incorporate the Columbus and Groveport Turnpike company, 402, 410, 449, 464, 626.
224. To repeal the act to lay out and establish the Bennington and Mt. Gilead Free Turnpike company, 416, 473, 649.
243. To amend the several acts incorporating Turnpike companies, 466, 501, 547, 557, 561, 654.
255. To incorporate the Four Mile and Seven Mile Turnpike company, 515, 526, 552, 568, 637.

BILLS OF THE SENATE—Continued.

TAXATION—TAXES.

Number.

72. To provide for taxing certain lands sold by the United States, 159, 161, 256, 281, 292, 342.
73. To amend the tax law passed March 2, 1846, 159, 161.
83. To authorize the trustees of the townships in Brown county, to levy an additional road tax, 169, 179, 257, 260, 272, 358.
101. To amend the act passed March 2, 1846, to tax money brokers, 208, 213, 308, 578, 654.
122. In relation to school taxes and sewers in the city of Toledo, 244, 252, 336, 394, 411, 543.
137. To authorize the trustees of Perry township, in the county of Columbiana, to levy a tax to erect a Town Hall and Market House in said township, 267, 271, 348, 383, 398, 543.
156. To authorize the trustees of townships in the county of Union, to levy an additional road tax, 297, 304, 381, 386, 639.
202. To authorize the town council of the town of Warren, to assess and collect an additional tax for fire purposes, 367, 375, 436, 443, 585.
209. To extend the corporate limits of the town of Xenia, in Greene county, 367, 375, 435.
270. To provide for the taxation of the Little Miami Rail Road company, 596, 610, 650, 651, 698.

TEMPERANCE—TAVERNS—INTOXICATING LIQUORS.

152. To repeal an act entitled an act regulating the sale of intoxicating liquors, in the town of Cuyahoga Falls, 291, 301, 351, 392, 410, 638.
219. Regulating the granting of licenses to taverns, public houses and houses of entertainment in certain cases, in the city of Columbus, 402, 410, 440, 465, 611.

MISCELLANEOUS.

8. To abolish capital punishment, 81, 86, 135, 672.
14. In addition to an act in relation to incorporated religious societies, passed March 5, 1836, 81, 87, 136, 209, 218, 431.
19. To incorporate the Ohio Institute of Natural Science, 86, 96, 144, 176, 205, 239.
22. To prevent hunting, killing or destroying deer in certain seasons of the year, 86, 96, 149, 171, 330, 343.
33. Concerning writs of error in fact, 101, 114, 207, 244, 252.
34. To amend the act relating to Juries, 101, 114, 207, 280, 442, 664, 651.

BILLS OF THE SENATE—Continued.

Number.

41. To repeal the act entitled an act to create the office of Attorney General and to prescribe his duties, and the acts amendatory thereto, 122, 130, 266, 393.
42. To repeal the act entitled an act to authorize the town of Hamilton to borrow money and for other purposes, 122, 130, 267, 270, 367, 375, 541.
50. To establish the ten hour system of labor in this state, 130, 151, 241, 291, 664.
56. To give additional security to land titles, 138, 142, 242, 262, 372, 376, 386, 397, 675.
71. To provide for the better preservation of the bonds of executors and administrators of the estates of deceased persons, 159, 160, 256, 311, 354, 358, 590.
85. To amend the act to provide for the internal improvement of the state of Ohio by Navigable canals, 175, 204, 267, 308, 310, 322, 473.
86. Allowing J. W. Baldwin, administrator of the estate of M. J. Gilbert, late of Franklin county, deceased, to complete real estate contracts of intestate, and to partition to sell lands, 201, 204, 267, 273, 431.
93. To change the name of Elizabeth A. Degraw, 202, 204, 276, 406, 410, 472.
112. Further to amend the act to dispense with proof in certain cases, passed December 18, 1823, 224, 228, 328, 392, 410.
115. Repealing a part of the 6th section of the act of January 24, 1848, 225, 228, 331, 634, 662, 691.
118. To revive the fourth section of an act therein named, 234, 236, 336, 512, 516, 570.
127. To provide for the construction of culverts and gates in mill dams in the township of Sylvania in the county of Lucas, 251, 262, 310, 342, 511, 516, 527.
135. To amend the act entitled an act to amend an act relating to wills, passed March 23, 1840, and for other purposes, 264, 271, 368, 429, 444, 641, 643.
139. To legalize a change in the town plat of Winchester, in Fairfield county, and to confirm the conveyance made by Reuben Dove, proprietor of Dove's addition to said town of Winchester, of the north half of lots Nos. 17 and 18, to Jacob Reese and others, 346, 355, 434, 482, 503, 585.
143. To change the name of John Stratton, 275, 393.
144. To reduce the compensation of the members of the General Assembly after the same has been in session ninety days, 275, 283, 348.
150. To repeal an act entitled an act to provide for the extinguishment of the State debt of Ohio, 289, 292, 361, 514.
158. To establish a land office at Defiance, and to abolish the land offices at Lima and Perrysburgh, 298, 305, 381, 457, 464, 583.

BILLS OF THE SENATE—*Continued.***Number.**

- 161. Amendatory of the act to provide for the profitable employment of convict labor on the new State House, passed February 21, 1848, and for other purposes, 303, 318, 381, 521, 540, 614, 621.
- 169. To repeal a part of a certain act therein named, 320, 332, 566, 568, 625, 637.
- 171. An act relating to occupying claimants of lands, 224, 292, 392, 382, 422, 580.
- 177. Further to amend the act to regulate the action of forcible entry and detainer, 333, 342, 419, 632, 652.
- 187. To repeal the provisions of the 41st section of the act for the punishment of crime, 341, 355, 434, 441, 465, 468, 664.
- 191. Concerning negotiable instruments, 349, 355, 434, 476, 582, 568, 637.
- 193. To amend an act entitled an act to amend an act directing the mode of proceedings in chancery, passed February 21, 1846, 347, 355, 434, 592, 641.
- 190. To extend Market street, in the town of Springfield, 346, 359, 422, 431, 443.
- 201. To authorize the establishment of a poor house by the city of Cleveland, 367, 375, 417, 436, 442, 464, 580.
- 207. To prevent railroad companies from charging a greater compensation for freight or passengers than is allowed by law, 374, 375, 466.
- 209. To amend the act entitled an act regulating judgments and executions, passed March 1, 1831, 373, 375, 449, 513, 526, 698.
- 210. To amend the act passed February 20, 1848, directing the mode of proceeding in chancery, passed March 14, 1841, 373, 385, 436, 441, 461, 469.
- 211. To amend the act regulating writs of attachment, 380, 385, 449.
- 212. In relation to the Miami Canal, the Miami Extension Canal, and the Wabash & Erie Canal, 380, 386, 436, 451, 464, 589.
- 163. To repeal the fifth section of an act entitled an act to authorize the commissioners of this State to lay out and establish certain State roads, 382.
- 215. To amend the act entitled an act to abolish imprisonment for debt, passed March 19, 1838, 394, 409, 476, 538, 556.
- 225. More effectually to punish the sale of lottery tickets in this State, 417, 425, 477, 511, 576.
- 227. Concerning the tax on lawyers and physicians, tax on pedlars, auction duties, and the tax on foreign insurance companies, 422, 430, 477, 513, 516, 546.
- 231. To amend the act entitled an act providing for the punishment of crime, passed March 7, 1838, 435, 443, 477, 515, 527, 669.
- 236. To authorize the canal fund commissioners to exchange certain certificates of the funded debt of this State, 458, 464, 547, 556, 664, 667.

BILLS OF THE SENATE—*Continued.*

Number.

257. In relation to fees of grand and petit jurors of Cuyahoga county, 458, 464, 547, 556, 564, 667.
245. To detach certain sections from Morrow county and attach the same to Richland county, 468, 501, 547, 682, 661, 677.
240. Recognising the New Orleans and Ohio telegraph company as a body corporate and politic within the State of Ohio, 475, 547, 602, 626, 635, 698.
258. To prohibit judges from officiating as attorneys in the courts of justices of the peace, 516, 526, 643, 652, 666, 691.
260. To reduce the valuation of real estate for the purpose of taxation, 555, 598, 647.
179. In relation to the old penitentiary lot in the city of Columbus, 567, 597, 606, 654.
267. To repeal an act therein named, 580, 592, 648.
268. In relation to the State road leading from Lower Sandusky to Findlay, 591, 596, 610, 654, 668, 676.
271. To amend the act to provide for the recording of town plats, 596, 605, 635, 676.
293. Relating to certain real estate in the town of Franklinton, Franklin county, 598, 644, 691.
275. Further to amend the act to provide for the election of Prosecuting Attorneys, 599, 610, 634.
276. To amend the act for levying taxes on all property in this State according to its true value, 609, 610, 650.
278. To render practicable the provisions of the act to authorize the commissioners of Highland county to subscribe to the capital stock of the Hillsborough & Cincinnati railroad company, 712, 714.

BILLS OF THE HOUSE.

APPROPRIATIONS, APPEALS, &c.

57. Concerning Senators and Representatives in the county of Hamilton, 504, 526, 549, 648.
60. Making partial appropriations for the years 1848 and 1849, 205, 213, 230.
325. Making appropriations for the year 1849, 542, 555, 607, 608, 609, 626.
130. To fix and apportion the representation of the General Assembly of the State of Ohio, 631, 635, 679.

BANKS—BANK PAPER.

133. To amend the act entitled an act to institute proceedings against

BILLS OF THE HOUSE—*Continued.***Number.**

against corporations not possessing banking powers, and the visitorial powers of courts, and regulating corporations generally, 306, 313, 363, 429, 443.

BLACK LAWS—REPEAL OF, &C.

52. To authorize the establishment of separate schools for the education of colored children, and for other purposes, 223, 228, 233, 243, 250, 273.

COURTS, &C.

40. Prescribing the times of holding the courts of common pleas in the sixteenth judicial circuit, 181, 204, 218, 382, 386, 446.
 87. To amend the act entitled an act prescribing the times of holding the courts of common pleas in the third judicial circuit, passed January 5, 1848, 214, 215.
 104. To fix permanently the times of holding the courts of common pleas in the second judicial circuit, 254, 262, 266, 276, 295.
 155. To fix the times of holding the courts of common pleas in the tenth judicial circuit, 263, 271, 275.
 116. Regulating the times of holding the courts of common pleas in the thirteenth judicial circuit, 285, 288, 294.
 108. To further amend the act entitled an act to regulate the practice of the judicial courts, 306, 313, 338, 393, 410.
 170. To fix the times of holding the courts of common pleas in the fifteenth judicial circuit, 224, 332, 339.
 147. To amend the act entitled an act prescribing the times of holding the courts of common pleas in the fourteenth judicial circuit, and for other purposes, passed February 2, 1848, 344, 354, 381, 395, 410.
 264. To fix the times of holding the courts of common pleas in the eighth judicial circuit, 416, 423, 439, 448.
 158. For regulating the practice of judicial courts, 473, 501, 548, 553, 659.
 302. Prescribing the times of holding the courts of common pleas in the eighteenth judicial circuit, 528, 539, 553, 571.

CRIMES AND OFFENCES.

53. To provide for the punishment of a certain crime therein named, 239, 246, 299, 392, 410.

CORPORATIONS.

34. To incorporate the Locust Street Wharf company of Gallipolis, 181, 206, 233, 280, 292.

BILLS OF THE HOUSE—*Continued.*

Number.

- 39. To amend the act entitled an act to encourage the organization of fire companies, and repeal former acts passed February 8, 1847, 185, 204, 233, 310, 321.
- 25. To amend the act incorporating the Farmer's Mutual Fire Insurance company of Medina county, 229, 238, 252, 299, 310, 321.
- 70. To incorporate the Relief Fire company of the city of Chillicothe, 247, 252, 300, 311, 332, 345.
- 45. To extend the charter of the Perrysburg Canal and Hydraulic company, 284, 291, 337, 343.
- 94. To incorporate the Hocking Savings Institute at Logan, 295, 304, 337, 354, 368, 378.
- 35. To incorporate the Savings Fund Society of Woodsfield, 296, 302, 307, 338, 344, 444, 464.
- 167. To incorporate the town of Rock Creek in Ashtabula county, 296, 304, 337, 343.
- 153. To incorporate Northern Fire company of Cincinnati, 296, 304, 337, 376, 386.
- 80. To incorporate the town of Waupokennetta, 369, 375, 449, 450, 461, 469, 506.
- 92. To amend the act entitled an act further to amend the act entitled an act to incorporate the town of Painesville, passed February 8, 1837, 387, 399, 447, 459, 469.
- 176. To amend the act to incorporate the city of Sandusky, in Erie county, and for other purposes, passed March 6, 1841, 289, 397, 447, 450, 469.
- 254. Supplementary to an act entitled an act to incorporate the Washington Fire Engine co. of Mt. Vernon, 528, 539, 563, 564, 584.
- 239. To incorporate the Warren county Farmer's Mutual Insurance company, 532, 563, 569.
- 292. To amend the act to incorporate the Portage county Mutual Fire Insurance company, 563, 581, 592.
- 247. To extend the corporate limits of the town of Clarington, in the county of Monroe, 544, 554, 581.
- 298. To amend the act to encourage the organization of fire companies and to repeal former acts, 581, 593.
- 365. To incorporate the Rescue Engine company No. 1, of the town of Bucyrus, 616, 620, 622.
- 348. Incorporating the Ohio Iron and Coal company, 663, 672.

ENABLING ACTS.

- 174. Authorizing the city council of Cincinnati to borrow such sums of money as may be required for the improvement of the city waterworks, 205, 213, 299, 374.
- 50. To authorize the commissioners of Van Wert county to borrow money for certain purposes, 229, 239, 298, 305.

BILLS OF THE HOUSE—*Continued.*

Number.

- 69. To authorize the trustees of Portland township, Erie county, to borrow \$20,000 and subscribe the same to Plank Road companies, 239, 244, 299, 299, 394, 410.
- 83. To authorize the trustees of Portland township, Erie county, to borrow \$20,000 for the improvement of the Sandusky harbor, 239, 244, 299, 305.
- 98. To authorize the trustees of the original surveyed township in Brown township, Athens county, to lease to the original lessees or their assigns, section 29, in said township, 239, 245, 299, 568, 582.
- 23. To authorize the administrator of Wm. S. Tracy, deceased, to complete real contracts, 296, 304, 338, 393, 647.
- 248. To authorize the commissioners of Marion county, to subscribe stock in railroad companies, 374, 379, 381, 384.
- 375. To authorize the Columbus and Sandusky turnpike company to sue the State, 558, 568, 656, 671.

ASSOCIATIONS, COLLEGES, &C.

- 2. To incorporate the Judson College in the county of Harrison, 168, 179, 232, 243, 252, 285.
- 51. To incorporate the Otterbein University, in Westerville, in the county of Franklin, O., 229, 238, 299, 311, 321.
- 24. To revive an act entitled an act to incorporate the Bishop's Calvinistic Seminary, passed March 17, 1835, and to change the name of said corporation, 247, 252, 299, 310.
- 64. To incorporate the Minster Fire Insurance Association, 246, 299, 342, 391, 398, 437.
- 136. To incorporate the Oxford Female Institute in the town of Oxford, in the county of Butler, 273, 283, 300, 310, 322, 325.
- 151. To incorporate the Cincinnati Medical Institute, 296, 304, 308, 345, 363, 394, 398, 432.
- 162. To incorporate the Mt. Washington College, Hamilton county, 307, 310, 313.
- 198. To revive and amend an act to incorporate the Tiffin Savings Institute, passed March 3, 1834, 332, 340, 342, 355, 668.
- 153. To incorporate the Troy Lodge No. 3, of the Independent Order of Odd Fellows, 344, 358, 381, 483, 508.
- 252. Confirming the charter of the Covington and Cincinnati Bridge company, incorporated by an act of the General Assembly of Kentucky, with certain limitations, 369, 375, 436, 464, 524, 559.
- 231. To incorporate the German Evangelical Lutheran and German Reformed United Protestant Congregation of Seneca township, Seneca county, 370, 375, 447, 459, 469.
- 177. To incorporate the Walnut street Baptist Church of Cincinnati, 387, 394, 448, 460, 459.

BILLS OF THE HOUSE—Continued.**Number.**

- 235. To incorporate the Dry Ridge Universalist Society of Greene township, Hamilton county, 472, 502, 548, 556.
- 253. To incorporate the Darke County Medical Society, 505, 526, 550, 552, 569.
- 294. To incorporate the St. John's Church of Evangelical Protestants of Beaver township, in the county of Pike, 544, 555, 564.
- 295. To incorporate the Roman Catholic St. Peter's Association of the Germans of Cincinnati, 544, 555, 564.
- 219. To incorporate the Alexander Presbyterian Church of Hibbardsville, in the county of Athens, 544, 554, 564.
- 228. To incorporate the Mt. Pleasant Academy in Kingston, Ross county, 544, 554, 580, 581, 593, 617.
- 332. To incorporate the St. Salem's Church of Evangelical Protestants of Scioto township, Jackson county, 545, 555, 564.
- 313. To incorporate the Windham Literary Association, 555, 563, 564.
- 280. To incorporate the Pickaway County Savings Institute, 559, 568, 578, 593.
- 201. To incorporate the Union Society of the Oberlin Collegiate Institute, 586, 592, 596, 617, 635, 651.
- 336. To incorporate the M. E. Church of the town of Tarlton, Pickaway county, 586, 592, 632, 662.
- 339. To incorporate Sidney Lodge No. 60, of the Independent Order of Odd Fellows, 586, 592, 596.
- 316. To incorporate the Defiance Female Seminary in the county of Defiance, 593, 610, 659, 674.
- 369. To incorporate the New Burlington Division No. 44, of the Sons of Temperance, 616, 634, 566.
- 374. To amend the act entitled an act to incorporate the proprietors of the Cemetery of Spring Grove, 618, 635, 652, 662.

JUSTICES AND CONSTABLES.

- 29. To regulate proceedings before justices of the peace, 472, 501, 548, 652, 662, 676.
- 199. To amend the act defining the powers and duties of justices of the peace and constables in civil cases, 653, 661, 668, 683, 691.

PRINTING.

- 278. Fixing the prices of printers for publishing the delinquent and forfeited list, 431, 443, 478, 514, 526, 559.

RELIEF ACTS.

- 33. To change the name of John G. Backhaus to J. G. Baker, 181, 204, 333, 383.

BILLS OF THE HOUSE—*Continued.***Number.**

- 61. For the relief of John D. Burrill, 246, 252, 277, 282, 286, 292, 395, 504.
- 156. For the relief of Nabby Wheeler, 344, 355, 381, 513, 546.
- 189. For the relief of Amelius Hayden and William M. Folger, 358, 368, 381, 409.
- 197. To restore John Kidwell to his legal rights and privileges, 473, 502, 516, 528, 548.

ROADS, SUPERVISORS, TAXES, &C.

- 3. To amend the act passed January 28, 1848, entitled an act to incorporate the Lorain Plank Road company, 154, 159, 230, 232.
- 13. To incorporate the Ashtabula Central Plank Road company, 167, 180, 232, 269, 283, 295.
- 14. To amend the act for opening and regulating roads and highways, passed March 14, 1831, and the acts amendatory thereto, 214, 218, 232, 632, 664.
- 46. To appoint commissioners to lay out and establish a State road in the counties of Meigs, Gallia and Jackson, 229, 238, 298, 306.
- 42. To repeal the act entitled an act prescribing the duties of supervisors, and relating to roads and highways, passed January 15, 1845, 247, 299, 311, 321.
- 75. To incorporate the Sandusky City and Castalia Plank Road company, 247, 252, 300, 341, 355.
- 32. To incorporate the Lower Sandusky Plank Road company, 263, 291, 300, 374, 386, 404.
- 100. To lay out and establish a State road in the counties of Washington and Athens, 294, 305, 338, 354, 368.
- 107. To extend the Monroeville Plank Road company to Elyria, in Lorain county, 306, 313, 338, 366, 374, 386, 415, 416, 445.
- 121. To incorporate the Little Miami Bridge company, 306, 313, 363, 383, 398, 432.
- 76. To incorporate the Lake Erie and Milan Plank Road company, 324, 332, 363, 392, 409, 410.
- 134. To amend the act entitled an act for the improvement and repair of the Cincinnati and Carthage road, and for other purposes, passed February 4, 1848, 324, 332, 363, 621.
- 200. To amend an act entitled an act to incorporate the Tiffin and Findlay plank road company, passed February 24, 1848, 324, 332, 363, 367, 376, 398, 411.
- 117. To amend the act to incorporate the Great Western railroad company, 324, 332, 362, 398, 432.
- 159. To incorporate the Maumee City railroad company, 244, 355, 381, 385, 441, 469, 541.

BILLS OF THE HOUSE—*Continued.*

Number.

- 148. To incorporate the Columbus, Piqua & Indiana railroad company, 358, 368, 381, 392, 410.
- 226. To incorporate the Sharon railroad company, 412, 423, 448, 457, 469.
- 196. To incorporate the Mad River & Miami Central railroad company, 431, 443, 478.
- 249. To incorporate the Trumbull, Portage & Geauga plank road company, 471, 502, 549, 552, 569, 586.
- 310. To incorporate the Martinville & Bridgeport plank road company, 472, 502, 515, 517, 527.
- 250. To lay out and establish a State road from Liberty township, in Putnam county, to the Van Buren, Independence & Ridgeville free turnpike road, in Henry county, 473, 502, 562, 549, 556.
- 305. To lay out and establish a State road in the counties of Athens, Jackson and Gallia, 473, 502, 549, 559.
- 309. To amend the third section of an act passed February 24, 1848, entitled an act to incorporate the Great Western railroad company, 473, 502, 549, 557, 571.
- 189. To incorporate the Four Mile Valley railroad company, 473, 501, 548, 556.
- 249. To incorporate the Cincinnati, Batavia & Williamsburg railroad company, 473, 502, 549, 554, 569.
- 208. To amend the act to incorporate the Steubenville & Indiana railroad company, 506, 526, 550, 553, 554, 571.
- 271. To incorporate the Mahoning plank road company, 528, 537, 566, 583, 617.
- 229. To lay out and establish a State road in the counties of Jackson and Athens, 544, 554, 565, 582, 591.
- 285. To amend an act entitled an act to lay out and establish a graded State road in the counties of Gallia and Jackson, 545, 555, 565, 583.
- 351. To authorise the commissioners of Stark county to subscribe stock to the Ohio and Pennsylvania railroad company, 559.
- 284. To amend the act to establish a graded State road in the counties of Gallia, Athens and Meigs, 565, 583.
- 372. To incorporate the Sunfish railroad, 570, 582, 590, 610.
- 388. To incorporate the Perrysburgh & Maumee Union Bridge company, 570, 582, 589, 592, 611, 644, 646.
- 228. To incorporate the Black River & Amherst plank road company, 586, 602, 620, 621, 622, 636, 655.
- 341. To incorporate the Maumee & Toledo plank road company, 586, 592, 602, 636, 655.
- 342. To incorporate the Middleport & Rutland plank road company, 611, 635, 651, 662, 676.
- 304. To incorporate the Cleveland & Twinsburgh plank road company, 616, 634, 651, 662, 676.
- 330. To incorporate the Akron plank road company, 616, 634, 651, 662.

BILLS OF THE HOUSE—*Continued.*

Number.

- 381. To incorporate the Cuyahoga Falls plank road company, 616, 634, 652, 662.
- 289. To amend the act entitled an act to incorporate the Urbana & Columbus railroad company, 618, 635, 640, 661.
- 354. To repeal the ninth section of the act entitled an act to incorporate the Milan & Richland plank road company, 638, 659.
- 308. To incorporate the Geauga and Trumbull plank road company, 638, 641, 661.
- 175. To amend an act entitled an act to authorize the city of Dayton to subscribe to the capital stock of certain railroad companies, 653, 661.
- 262. To amend the act to incorporate the Mad River & Great Miami railroad company, 653, 661, 671.

TURNPIKE ROADS.

- 4. To incorporate the Madison and Fayette Turnpike Road company, 168, 180, 230, 235, 246.
- 39. To incorporate the London, Summerford and Martinsburg Turnpike company, 204, 230, 235, 215.
- 47. To amend the act incorporating the Colerain, Oxford and Brookville Turnpike company, 229, 238, 298, 383, 393, 432.
- 65. To repeal an act entitled an act to incorporate the Harmar and Lancaster Turnpike Road company, 217, 252, 299, 700.
- 66. To incorporate the Oxford, Western and Conneautville Turnpike company, 217, 252, 300, 392, 411, 417.
- 68. To incorporate the Waynesville and Sugar Creek Turnpike company, 217, 252, 314, 321, 345.
- 93. To incorporate the Milford, Elenton and Woodsfield Turnpike company, 224, 239, 338, 384, 398, 432.
- 110. To incorporate the Columbia and New Richland Turnpike and Bridge company, 224, 305, 335, 381, 393, 432.
- 161. To incorporate the Franklin and Germantown Turnpike company, 296, 301, 337, 344, 350.
- 119. To incorporate the Bellbrook and Beaver Creek Turnpike Road company, 306, 313, 339, 384, 398, 437.
- 125. To amend the act entitled an act to incorporate the New Baltimore and New Haven Bridge company, passed February 8, 1847, 306, 313, 363, 336, 376, 387, 415, 416.
- 138. To incorporate the Lewisburg and Liberty Corners Turnpike Road company, 306, 313, 365, 392, 410.
- 112. To incorporate the Union Bridge and Cincinnati Turnpike Road company, 306, 313, 338, 384, 398, 432.
- 186. To incorporate the London and Lafayette Turnpike company, 307, 313, 363, 392, 410.
- 149. To repeal the act to lay out and establish the Mt. Vernon, Bennington and Delaware Free Turnpike road, 354, 381, 429.

BILLS OF THE HOUSE—*Continued.*

Number.

- 184. In relation to the Urbana, Troy and Greenville Turnpike company, 369, 375, 380, 395, 410, 444, 574.
- 236. To incorporate the Locust Grove and Ripley Turnpike company, 369, 375, 447, 460, 527.
- 174. To amend the act entitled an act to incorporate the Dayton and Xenia Turnpike company, passed February 28, 1845, 387, 397, 447, 457, 467, 506.
- 185. To incorporate the Dayton, Xenia and Watervliet Turnpike company, 399, 409, 448, 457, 469.
- 210. To amend an act entitled an act to incorporate the Franklin and Springboro Turnpike company, in the county of Warren, 437, 443, 478, 513, 527.
- 205. To incorporate the Troy, Stanton and Losscreek Turnpike Road company, 472, 502, 548, 556.
- 269. To incorporate the Bentonville and New Market Turnpike company, 472, 502, 549, 556.
- 274. To incorporate the Elizabethtown and Clevestown Turnpike company, 472, 502, 549, 557.
- 290. To incorporate the Green and Mill Creek Township Turnpike company, 472, 502, 549, 554, 569.
- 232. To incorporate the Circleville, Darbyville and London Turnpike company, 544, 554, 566, 582.
- 327. To incorporate the London and Mt. Sterling Turnpike company, 544, 555, 566, 583.
- 346. To incorporate the Stillwater and Darke county turnpike company, 544, 555, 566, 583.
- 216. To authorize the town council of Miamisburg, to levy a tax to construct a free turnpike road, 544, 554, 580, 592.
- 318. To incorporate the Higginsport, Russelville and Eckmansville turnpike road company, 571, 582, 590, 610.
- 333. To incorporate the Clifton, Cedarville and Jamestown Turnpike Road company, 586, 592, 607, 636.
- 335. To incorporate the Hamilton and Mason Turnpike company, 586, 592, 603, 636.
- 349. To amend the act entitled an act to incorporate the St. Paris and Elizabethtown, Fletcher, Piqua and Covington Turnpike company, 616, 634, 651, 602.
- 356. To incorporate the New Richmond and Bethel Turnpike company, 616, 634, 652, 632.
- 364. To incorporate the Dayton, Shakervillage and Xenia Turnpike company, 638, 612, 662.
- 382. To amend an act entitled an act for the preservation and repair of the National road, 633, 619, 669, 680.
- 323. To incorporate the Barnsville and Warren Turnpike company, 653, 661, 670, 674.
- 369. To incorporate the Manchester and Bentonville Turnpike company, 691, 692, 693, 697.

BILLS OF THE HOUSE—*Continued.*

FREE TURNPIKES.

Number.

- 7. To establish a free turnpike road from Springborough to Ridgville, in Warren county, 154, 159, 232, 291, 303.
- 152. To amend an act passed February 5, 1847, entitled an act accepting the charter and franchises of the first range turnpike company in Ashtabula county, and declaring the same a free turnpike road, 296, 314, 338, 384, 400, 432.
- 223. To lay out and establish the West Elkton turnpike road, 324, 332, 353, 393, 410.
- 181. To repeal a part of the act entitled an act to lay out and establish a free turnpike road from Delaware, in Delaware county, to Kenton in Hardin county, passed February 8, 1848, 387, 397, 448, 460, 469.
- 211. To lay out and establish a free turnpike road from Middletown and West Alexandria turnpike company, 387, 397, 448, 459, 468.
- 225. To repeal an act entitled an act to lay out and establish a free turnpike road therein named, 472, 502, 549, 557, 566, 583.
- 258. To lay out and establish a free turnpike road from Defiance, in Defiance county, to the Indiana State line, at the point where the Fort Wayne road crosses said line in the county of Paulding, 472, 502, 549, 557.
- 204. To incorporate the Miamisburg western free turnpike company, 473, 502, 548, 556.

SCHOOLS, LANDS, &c.

- 15. To authorize the sale of section 16, in Richland township, Wyandot county, 154, 159, 232, 303, 314.
- 18. To provide for the sale of the Northwest quarter of section 16, the original survey of township nine, range five, in the Steubenville district, now in Green township, Harrison county, 169, 180, 232, 301.
- 16. To authorize the sale of school section 16, Salem township, Wyandot county, 168, 180, 232, 303, 314.
- 48. To authorize the sale of school section 16, in Harrison township, Gallia county, 181, 204, 233, 303, 316.
- 82. To authorize the sale of school section 16, in Pleasant township, Hancock county, 247, 252, 300, 305.
- 86. To incorporate the Farmington Normal school, in Trumbull county, 274, 283, 337, 345.
- 144. To authorize the sale of school section 16, in Plain township, in Wood county, 284, 291, 339, 343.
- 91. To authorize the sale of school lands in Venice township, Seneca county, 294, 305, 338, 343.

BILLS OF THE HOUSE—*Continued.*

Number.

- 95. To authorize the sale of school lands belonging to Union township, (fractional) Champaign county, 294, 305, 338, 341, 356, 385, 410.
- 139. To regulate a certain school district in Orwell township, Ashtabula county, 296, 304, 337, 343.
- 160. To amend the act entitled an act to encourage teachers institutes, passed February 8, 1849, 296, 304, 339, 341, 356, 359, 377.
- 137. For the support and better regulation of common schools in district No. 4, in Washington township, Preble county, 296, 304, 337, 343.
- 109. To provide for the sale of school section 16, in Bloomfield township, Hardin county, 306, 313, 338, 341, 356.
- 115. To authorize the sale of school lands belonging to Tymochtee township, Wyandot county, 306, 313, 338, 341, 356, 374.
- 140. To extend the time of payment of school section 16, in Springfield township, Lucas county, 306, 313, 363, 481.
- 165. To amend the act entitled an act for the support and better regulation of schools, and to allow the trustees of Richland township, Belmont county, to divide the town of St. Clairsville into two or more school districts, 338, 397, 410.
- 166. To authorize the sale of part of school section 16, in Smithfield township, Jefferson county, 344, 355, 381, 453.
- 277. To authorize the sale of school section 16, in Medina township, Williams county, 358, 368, 447, 460, 469.
- 173. To authorize the sale of the South half of school section 24, granted to Washington township, now in Morrow county, 387, 397, 449, 460, 469.
- 243. To amend the act passed February 24, 1848, entitled an act to amend an act entitled an act for the support and better regulation of common schools, &c., 414, 423, 448, 466, 503, 529.
- 276. To authorize the trustees of Clay township, in Knox county, to establish said township for school purposes, 472, 502, 549, 557, 573, 574, 617.
- 213. To amend the act entitled an act for the support and better regulation of common schools, and to create permanently the office of superintendent, passed March 1838, 473, 502, 548, 550, 556.
- 157. To authorize the sale of the northwest quarter of school section 1, in Buck township, Hardin county, 473, 502, 549, 556.
- 270. To authorize the sale of school lands in Elizabeth township, Lawrence county, 473, 502, 549, 557.
- 257. To extend the time of payment of the purchase money of section 16, in township No. 3, U. S. R., Lucas county, 473, 502, 549, 559.
- 220. To authorize the sale of lands belonging to Pitt township, Wyandot county, 506, 526, 550, 556.
- 317. To extend the time of payment for school section 16, in Clinton township, Stark county, 544, 555, 567, 583.

BILLS OF THE HOUSE—*Continued.*

Number.

- 359. To extend the time of payment to purchasers of school section 16, in township 4, range 4, Warren county, 544, 555, 564, 583.
- 218. To authorize the sale of certain school lands in Muskingum county, 544, 554, 563, 568.
- 293. To authorize the sale of certain forfeited lands in Wyandot county, 545, 555, 578, 593.
- 344. To amend the act entitled an act to regulate the sale of ministerial and school lands, and the surrender of permanent leases thereto, 586, 592, 635, 667, 674, 698.
- 366. To authorize the trustees of Berne township, Athens county, to lease certain school lands therein named, 616, 634, 651, 662.
- 367. To amend the act passed March 11, 1843, entitled an act for the support and better regulation of common schools, &c., 616, 634, 657.
- 387. To amend the act entitled an act to repeal an act entitled an act for the support and better regulation of common schools, &c., 638, 651, 662.
- 357. To repeal the provisions of an act passed February 14, 1848, entitled an act for the support and better regulation of common schools in the town of Akron, 638, 652, 662.
- 392. To authorize the sale of school section 16, in Wells township, Jefferson county, 653, 661, 668, 674.

TOWNS, CITIES, &C.,

- 5. To incorporate the town of Patriot, in the county of Gallia, 154, 159, 232.
- 6. To incorporate the town of Carlisle, in the county of Monroe, 154, 159, 232.
- 26. To incorporate the town of Morrow, in the county of Warren, 167, 180, 233.
- 19. To extend the corporate limits of the town of Germantown, in the county of Montgomery, 168, 180, 233, 249, 262.
- 20. To incorporate the town of Farmersville, in Montgomery county, 168, 180, 233.
- 36. To incorporate the town of Malvern, in the county of Carroll, 181, 204, 233, 420, 430.
- 69. To incorporate the town of Flushing, in Belmont county, 205, 203, 299, 397.
- 49. To incorporate the town of Bryan, in the county of Williams, 229, 238, 298.
- 58. To amend an act to incorporate the town of Franklin, in the county of Warren, and to repeal all laws heretofore enacted on that subject, passed February 8, 1848, 239, 244, 299, 374, 386.
- 84. To amend the act passed February 4, 1836, entitled an act incorporating the town of Jefferson, in the county of Ashtabula, 239, 244, 299, 310, 322.

BILLS OF THE HOUSE—*Continued.*

Number.

- 90. To amend part of the act incorporating the town of Steubenville, 247, 252, 289, 303, 314, 345.
- 114. To incorporate the town of St. Clairsville, in Belmont county, 263, 271, 300, 409, 423.
- 73. To incorporate the town of Youngstown, in the county of Mahoning, 274, 283, 337.
- 97. To amend an act to incorporate the town of Elyria, 294, 305, 338, 420, 420.

TOWNS, CITIES, &C.

- 157. To extend the corporate limits of Cincinnati, 344, 353, 381, 451.
- 188. To amend an act entitled an act to incorporate the towns of New Richmond and Susanna, in the county of Clermont, and the act amendatory thereto, 421, 443, 478, 564, 582.
- 222. Repealing the act entitled an act incorporating the town of Benton, in the county of Crawford, 472, 502, 548, 556.
- 190. To amend the act entitled an act to incorporate the town of Xenia, in the county of Green, 528, 539, 564, 582.
- 239. To incorporate the town of Palestine, in the county of Darke, 228, 539, 563, 569, 586.
- 230. To extend the corporate limits of the town of Mount Sterling, in the county of Madison, 539, 563, 569, 585.
- 281. To incorporate the town of Canfield, in the county of Mahoning, 529, 539, 563, 569.
- 350. To alter the plat of the village of Sullivan, in Ashland county, 544, 555, 567, 583.
- 275. To extend the corporate limits of the town of Mt. Gilead in Morrow county, 545, 554, 563, 569.
- 343. Further to amend the act entitled an act to incorporate the town and township of Fulton, in Hamilton county, 571, 584, 657, 660.
- 319. To amend the charter of Ohio City, 586, 632, 661.
- 324. Further to amend the act entitled an act to incorporate the town of Fairport, 586, 592, 647, 662.
- 337. To incorporate the town of New Burlington, in the counties of Clinton and Green, 586, 592, 632, 662, 676.
- 394. To incorporate the town of Spring Hills, in the county of Champaign, 653, 661, 671.
- 396. Further to amend the charter of the city of Cincinnati, 653, 661, 671.

TAXATION—TAXES.

- 43. To regulate the levying of taxes for road purposes in Belmont and Ashtabula counties, 205, 213, 233, 239, 246, 270, 283, 295, 316.

BILLS OF THE HOUSE—Continued.

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